

Reintegration of convicts

Class 4

*The Nelson Mandela Rules
- a guide for prison practitioners
and legislators*



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KATEDRA PRAWA KARNEGO WYKONAWCZEGO

Nelson Mandela Rules

Key international rules and standards

The Rules are **based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment.**

- ▶ 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 to ensure the rights of prisoners are respected.
- ▶ 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 eight substantive areas to reflect standards that have emerged in correctional science and human rights since 1955.
- ▶ The revision process, which took more than four years, **focused on eight thematic areas:** prisoners' inherent dignity as human beings; vulnerable groups of prisoners; medical and health services; restrictions, discipline and sanctions; investigation of deaths and torture in custody; access to legal representation; complaints and inspections; and staff training. In addition, terminology was updated throughout the document. In all, about 35 per cent of the Rules were revised

Nelson Mandela Rules

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 - prisoners' inherent dignity as human beings;
 - vulnerable groups of prisoners;
 - medical and health services; restrictions,
 - discipline and sanctions;
 - investigation of deaths and torture in custody;
 - access to legal representation;
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Nelson Mandela Rules

*„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 Mandela

- ▶ Nelson Mandela was first President of South Africa from 1994 to 1999, who spent 27 years in prison
- ▶ He was the country's first black head of state and the first elected in a fully representative democratic election.



- ▶ Mandela was a controversial figure for much of his life.
- ▶ He spent **27 years in prison for opposing South Africa's apartheid system**. He faced harsh conditions meant to break his resolve, but Mandela refused to give up his efforts to achieve equality for all people.
- ▶ In 1944, Mandela, a lawyer, joined the African National Congress (ANC), the oldest Black political organization in South Africa, where he became a leader of Johannesburg's youth wing of the ANC.
- ▶ In 1952, he became deputy national president of the ANC, advocating nonviolent resistance to apartheid—South Africa's institutionalized system of white supremacy and racial segregation.

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- ▶ In 1961, he was arrested for treason, and although acquitted he was arrested again in 1962 for illegally leaving the country.
- ▶ Convicted and sentenced to five years at Robben Island Prison, he was put on trial again in 1964 on charges of sabotage. In June 1964, he was convicted along with several other ANC leaders and sentenced to life in prison. Mandela spent the first 18 of his 27 years in jail at the brutal Robben Island Prison.
 - ▶ He served penalty in a small cell without a bed or plumbing, he was forced to do hard labor in a quarry. He could write and receive a letter once every six months, and once a year he was allowed to meet with a visitor for 30 minutes.
 - ▶ In 1989, Frederick de Klerk became South African president and set about dismantling apartheid. De Klerk lifted the ban on the ANC, suspended executions, and in February 1990 ordered the release of Nelson Mandela.
 - ▶ In 1994, the ANC won an electoral majority in the country's first free elections, and **Mandela was elected** South Africa's president.
 - ▶ Mandela retired from politics in 1999, but remained a global advocate for peace and social justice until his death in December 2013.

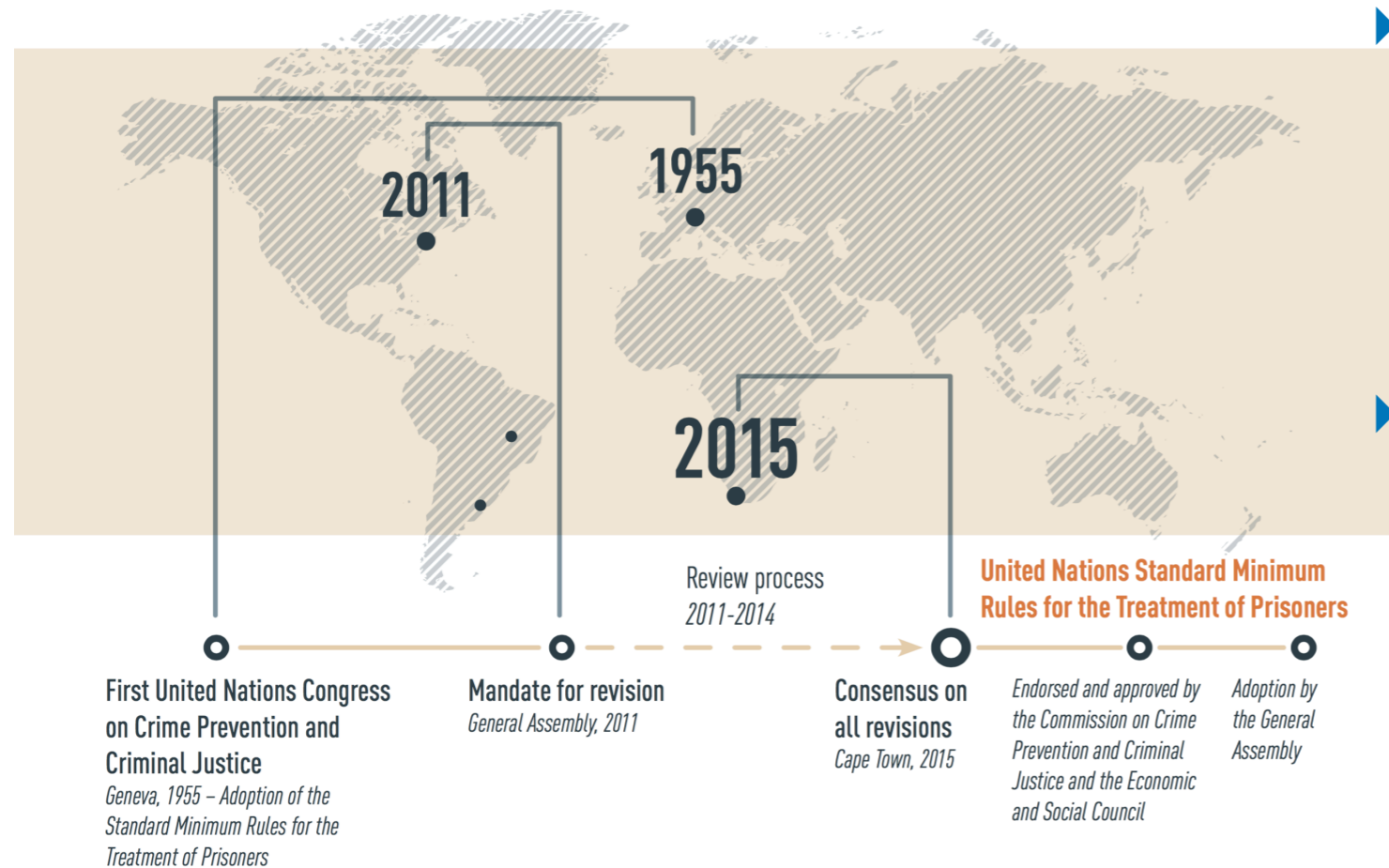


Nelson Mandela Rules



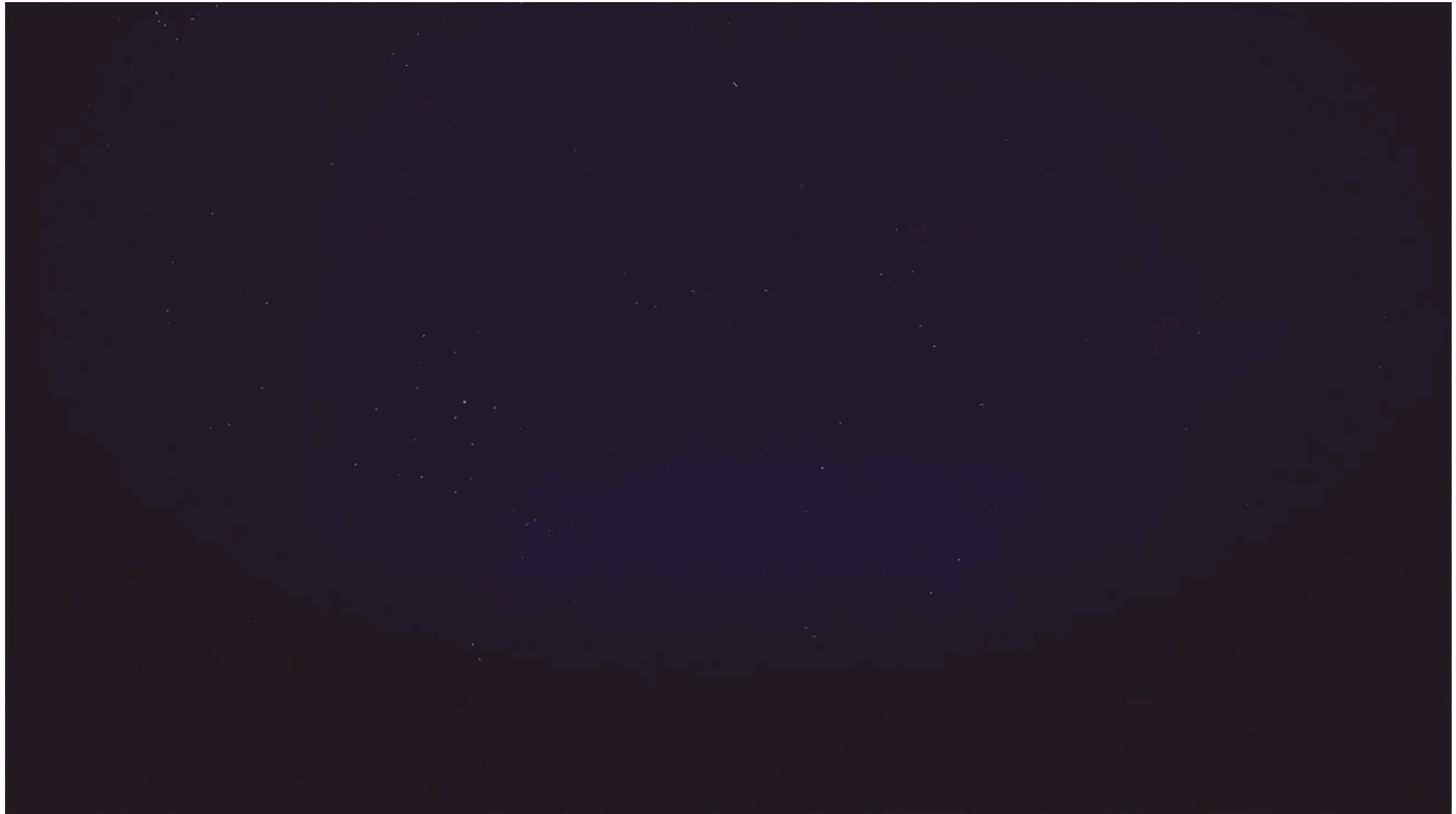
The Nelson Mandela Rules

The United Nations Standard Minimum Rules
for the Treatment of Prisoners



- ▶ 1955- First United Nations Congress on the Prevention of Crime & the Treatment of Offenders- [The Standard Minimum Rules for the Treatment of Prisoners](#)) were adopted
- ▶ 2011-Open-ended Intergovernmental Expert Group- [the General Assembly decided, to establish an open-ended intergovernmental Expert Group to review and possibly revise the rules.](#)
- ▶ 2015- In December 2015, the UN General Assembly adopted the revised rules as the “United Nations Standard Minimum Rules for the Treatment of Prisoners”. As per the recommendation of the Expert Group, the revised rules are to be known as ["the Nelson Mandela Rules"](#) to honour the legacy of the late President of South Africa, [Nelson Rolihlahla Mandela](#),

Nelson Mandela Rules



Applying the Nelson Mandela Rules from admission to release

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.

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.
- ▶ Torture or other ill-treatment is prohibited.
- ▶ Prisoners should be treated according to their needs, without discrimination.
- ▶ The purpose of prison is to protect society and reduce reoffending.
- ▶ The safety of prisoners, staff, service providers and visitors at all times is paramount.

Applying the Nelson Mandela Rules from admission to release

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.

Basic principles

Those rules are focussed on nine thematic areas including:

- ▶ Prison health care;
- ▶ Restrictions, discipline and sanctions;
- ▶ Restraints;
- ▶ Cell searches;
- ▶ Contact with the outside world;
- ▶ Prisoner complaints, and;
- ▶ Investigations and inspections.

Applying the Nelson Mandela Rules from admission to release

A **red star *** indicates that changes have been made in this area.

Admission to prison

➔ **Allocation*** [Rule 59]

The Rules require prisoners to be housed close to their home to facilitate social rehabilitation.

➔ **Registration*** [Rules 7, 8]

Information that should be collected and entered into the prisoner file now includes, for example, names and location of family, and any visible injuries or complaints about prior ill-treatment.

➔ **Information*** [Rules 54, 55]

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.

➔ **Prisoners' property** [Rules 7, 67]

The prison must place any property belonging to the prisoners (that they are not allowed to keep with them) in safe custody, alongside a signed inventory. Any property should be returned to them in good condition on their release.

➔ **Medical screening*** [Rules 30, 34]

A healthcare professional must examine every prisoner as soon as possible after arrival. The Rules provide that this initial examination should not only assess healthcare needs and give treatment but also identify any psychological or other stress and any signs of ill-treatment, which should be documented and reported to the competent authority.

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Classification and accommodating special needs

➔ **Categorisation** [Rule 11]

Certain groups of prisoners must be housed separately as a means of protection and to facilitate adequate individual treatment. This applies to men and women, pre-trial and convicted prisoners, children and adults.

➔ **Classification** [Rules 89, 93, 94]

An individual assessment is important to identify any risks prisoners may pose to themselves, to staff or to other prisoners, but also any risks they might be exposed to, specific needs they have and rehabilitation measures that should be taken. Classification systems should be flexible in order to support individualisation of treatment.

➔ **Special needs*** [Rules 2, 5]

Prisons must make adjustments to accommodate prisoners with physical, mental or other disabilities in order to ensure access to services and programmes on an equitable basis. Measures to address specific needs must not be considered discriminatory.

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Prison staff

➔ **Safety*** [Rule 1]

The safety of prison staff must be ensured at all times.

➔ **Employment** [Rules 74, 78]

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.

➔ **Remuneration** [Rule 74]

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.

➔ **Recruitment** [Rules 74, 81]

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.

➔ **Training*** [Rules 75, 76]

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.

➔ **Management** [Rules 79, 80]

The Rules describe the duties of prison directors and the qualifications they should hold.

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Files and records

A prisoner file management system has always been required as a vital tool for the effective running of any prison. The revised Rules now recognise that the system may be electronic and also give further guidance on what files should include, who has access to them, and how data should be used.

System* [Rules 6, 10]

A standardised prisoner file management system must be in place. Whether an electronic database or paper-based system, a secure audit trail is critical for preventing unauthorised access to or modification of any files. Data should be analysed to identify occupancy rates and trends.

Information* [Rules 7-9, 26, 92]

Each file should include information on a whole range of issues affecting a prisoner, including their personal data, date of release and/or transfer, the status of their legal case, classification reports, disciplinary sanctions and complaints made. Individual medical files should also be kept, separately and confidentially, and be accessible to the prisoner.

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Accommodating prisoners

⇒ **Hygiene** [Rules 15, 16, 18-21]

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. [See also UN Bangkok Rules]

⇒ **Food and water*** [Rules 22, 35, 42, 43]

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.

⇒ **Sleeping** [Rules 12-14, 42, 113]

If accommodation is cell based, only one prisoner should be housed in each cell, and where there are dormitories, careful selection procedures must be used to decide on who is housed together. Pre-trial detainees should be housed in single cells. Proper heating and ventilation, air, light and minimum floor space must be provided, without exception.

⇒ **Children*** [Rules 28, 29]

The decision on whether children are accommodated in prison with their parent should be based on the best interests of the child. Provision needs to be made for pre- and post-natal care, childcare facilities and healthcare services for children. Children housed in prison must never be treated as prisoners.

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Discipline and sanctions

➔ **Information*** [Rules 54, 55]

The Rules recognise that understanding rights and obligations is key for day-to-day prison management. 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.

➔ **Searches*** [Rules 50-53, 60]

Procedures for searches must be laid down in law or regulations and any decision on whether to conduct a search should consider whether it is necessary and proportionate. Search procedures must respect the dignity and privacy of the prisoner, and not be used to harass or intimidate. Invasive body searches should be the last resort, and the findings of searches need to be recorded. Searches of visitors, at a minimum, must be subject to the same safeguards as searches of prisoners and take account of their status as non-prisoners.

➔ **Solitary confinement*** [Rules 43-46]

Given its devastating effect on physical and mental health, the Rules stipulate that solitary confinement should only be used in exceptional cases, as a last resort, for as short a time as possible, after authorisation by a competent authority, and subject to independent review. Indefinite and prolonged solitary confinement (of more than 15 days) is prohibited entirely. For some groups, eg. pregnant or breast-feeding women, any use of solitary confinement is prohibited.

The Rules define solitary confinement as confinement for more than 22 hours per day without meaningful human contact. Interpretation of 'meaningful human contact' should recognise the suffering that any person will experience if isolated from and deprived of contact with other human beings.

Applying the Nelson Mandela Rules from admission to release

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⇒ **Disciplinary offences*** [Rules 36-43]

The Rules outline procedures and safeguards that should be in place to respond to allegations of a disciplinary offence. Laws or regulations must clearly define what constitutes a disciplinary offence, any sanction must be proportionate to the act, and prisoners must have the opportunity to defend themselves. The application of disciplinary sanctions must be recorded. The use of alternative dispute resolution mechanisms is encouraged to prevent disciplinary offences and resolve conflicts. When the interests of justice require, particularly in cases involving serious disciplinary charges, prisoners must be able to defend themselves in person, or through legal assistance.

⇒ **Use of restraints*** [Rules 43, 47-49]

Instruments of restraint that are inherently degrading or painful are prohibited. The use of any other instrument is subject to strict conditions: their use is only legitimate if no lesser form of controlling an actual risk is available and they must be removed as soon as possible. Restraints should be removed when a prisoner appears in court, and must never be used on women during labour, during childbirth or immediately after.

⇒ **Use of force** [Rule 82]

Except in cases of self-defence or attempted escape, staff should not use force on prisoners. Any use of force must not exceed what is strictly necessary, and should subsequently be reported. Only in exceptional circumstances should prison staff be armed. UN standards also require strict regulations on the use of force and that arbitrary or abuse of the use of force be punishable as a criminal offence.

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Contact with the outside world

➔ **Family and friends** [Rules 43, 58-60, 68, 70]

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.

Prisoners have the right to inform friends or family about their imprisonment, transfer and of serious illness or injury. 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.

➔ **Legal representatives*** [Rules 41, 53, 61, 119, 120]

Prisoners must be given adequate opportunity, time and confidential facilities to meet with their lawyer. They should have access to effective legal aid, in accordance with international standards.

Prisoners are allowed to have access to and keep their legal documents, so they are able to effectively participate in legal proceedings.

➔ **Embassies** [Rule 62]

Foreign nationals must have the opportunity to get in touch with their consular representatives. This Rule recognises their specific situation which can include an inability to communicate in the common language of the prison, lack of information and knowledge of the legal system, and difficulties in contacting family members.

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Day-to-day activities

➔ **Rehabilitation/resocialisation programmes*** [Rules 4, 88, 89, 91-94, 96-108]

Prisons should offer education, vocational training, work, and any other assistance needed for the purpose of rehabilitation/resocialisation and reintegration. This reflects the primary purpose of imprisonment to protect society and reduce recidivism. To be successful such programmes should be individualised. Prisons should recognise the key role staff play in the rehabilitation of prisoners.

➔ **Work*** [Rules 40, 96-103]

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.

➔ **Meaningful activities** [Rules 4, 23, 64-66, 105]

Providing meaningful activities supports prison management as well as the mental health and rehabilitation of prisoners. Opportunities for sport should be provided and at least one hour per day of outdoor exercise permitted. A prison library must be available and prisoners should be allowed to practise their religion.

➔ **Education** [Rule 104]

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.

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Physical and mental health

➡ **Access to healthcare*** [Rules 24-29, 31]

As the state bears responsibility for those it deprives of their liberty, healthcare must be provided in prison and offered at the same level of care as in the community. In line with good practice, prison healthcare should be organised in close cooperation with community health services, including to ensure continuity of care. The Rules elaborate on what prison healthcare services should consist of, including for any children housed in prison with their parent.

➡ **Role of healthcare staff*** [Rules 25, 30-34]

The role of healthcare professionals in prison must be clearly separate from that of the prison administration. The same ethical and professional standards apply to prison healthcare staff as those outside prison. Their role in prison is to evaluate, promote and treat the physical and mental health of their patients - prisoners. This includes treatment and care for infectious diseases, substance dependencies, mental health and dental care. Healthcare staff must not be involved in prison management issues, such as disciplinary measures, and their clinical decisions must not to be overruled or ignored by non-medical prison staff. Prison healthcare staff have a duty to report any signs of torture or other inhuman treatment.

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➔ **Prisoners as patients*** [Rules 26, 32]

When prisoners see a doctor they are patients just like they would be in the community. Patients must give their informed consent to any medical interventions and examinations, and their medical records are confidential. The protection of staff and other prisoners from infectious diseases, for example, can be achieved by only disclosing the information necessary so the required measures can be taken whilst still upholding medical confidentiality.

➔ **Advice on health*** [Rule 35]

The competent public health body should regularly inspect and advise the prison director on a variety of issues impacting on the health and well-being of prisoners - as well as prison staff. This includes food, hygiene of the institution and of prisoners, sanitation, temperature, lighting and ventilation, and other conditions.

Transfer and transport [Rules 26(2), 73]

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.

Release from prison

➔ **Property** [Rule 67]

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.

➔ **Reintegration** [Rules 88, 90]

Opportunities to reintegrate prisoners into the community gradually, such as pre-release schemes or open prisons, should be used. Aftercare services should be provided.

Applying the Nelson Mandela Rules from admission to release

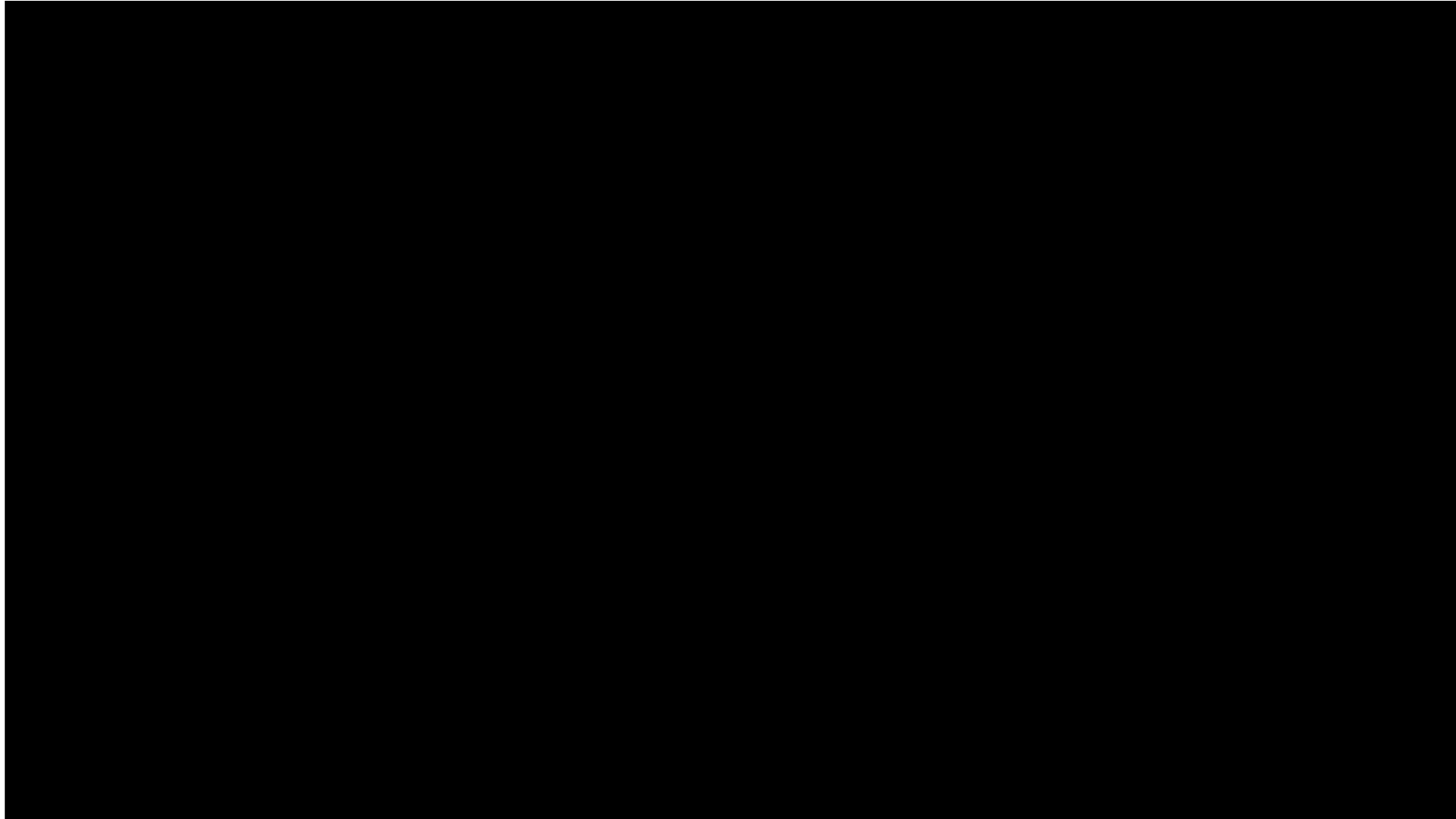
Complaints and independent inspection

- ▶ Provisions dealing with information for prisoners and access to complaints mechanisms has been updated, as well as protection against retaliation, intimidation or other negative consequences as a result of a complaint. The impact of external monitoring was acknowledged by introducing the requirement of a twofold system of regular inspections, internal as well as external by an independent body. The revised Rules specify the powers of inspectors and require written inspection reports and encourage their publication.

Protection of vulnerable groups

- ▶ Revisions to provisions for prisoners with particular vulnerabilities were limited, but overall the Rules now clarify that prisons need to identify the individual needs of prisoners and that measures taking account of such needs must not be regarded as discriminatory. Some provisions were incorporated on children imprisoned with their parent and outdated terminology regarding prisoners with disabilities was changed.

Applying the Nelson Mandela Rules from admission to release



Summary

The legal status of the Nelson Mandela Rules is complex.

- ▶ The Nelson Mandela Rules are a crucial guide for prison practitioners and legislators
- ▶ Nelson Mandela Rules set out what is generally accepted as being good principles and practices in the treatment of prisoners and prison management and they represent, as a whole, the minimum prison conditions accepted as suitable by the United Nations.
- ▶ The reality is that in the years since the initial adoption of the Standard Minimum Rules for the Treatment of Prisoners in 1955, their status has grown.
- ▶ Not only have they influenced national developments in prison law and been applied by national courts in various countries, but they have also been highly influential in assisting the United Nations and other international bodies responsible for the interpretation and enforcement of binding international treaties, in particular those that prohibit torture or other cruel, inhuman or degrading treatment or punishment.

Summary

Given their increasing status, the incorporation of the Nelson Mandela Rules into national prison legislation is more pressing than ever.

- ▶ The Nelson Mandela Rules are an inspiration for good prison legislation
- ▶ While the Rules as a whole are not legally binding, some of their provisions have reached the status of customary international law (those rules that relate directly to the prohibition of torture)
- ▶ In 2017, the General Assembly explicitly encouraged Member States to use the Rules as a guide in the development of prison law

Nelson Mandela Rules and Criminal Justice

The lawful punishment of criminals, in order to protect a society from potential further harm, is an integral part of any criminal justice system.

Those rules have influence on:

- ▶ Crime prevention
- ▶ Criminal policy reform
- ▶ Rehabilitation and social reintegration programmes for prisoners in the course of imprisonment and post-release support services upon release

Nelson Mandela Rules and Criminal Justice

The practical application of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) enables countries to strengthen prison management with a view to ensure the secure, safe and humane custody of prisoners.

There is a prison crisis in many Member States.

Those rules are respond to global prison challenges and needs.

- ▶ to focus on each group of prisoners
- ▶ to help reduce over-incarceration,
- ▶ to help promote the effective use of non-custodial sanctions,
- ▶ to help with treatment and alternatives for drug- related offences;
- ▶ and to help strengthen access to legal aid;

Summary



Is a prison sentence always the solution?

- ▶ **Prison overcrowding** is one of the most serious problems facing **prisons** today.
- ▶ Prison systems are better able to cope with their daily functions and are better prepared to deal with threats of all kinds when they are less crowded, better resourced and organised in closer coordination with other relevant national agencies.

Extraordinary story of how former prisoner transformed his life through education and meaningful activities

