



## Terms of Reference<sup>1</sup>

### 1. Subject:

The ODIHR Anti-Torture Programme requires the service of an experienced Consultant to support the implementation of the “**Nelson Mandela Rules**” Project, a project that includes in its first phase research and drafting of a Guidance document on the Revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

### 2. Duration: July 2016 to September 2017 (15 months)

Estimation of working days: 50 (23 in 2016, 27 in 2017 tbc)

### 3. Tasks/ Deliverables:

The Consultant will be tasked with developing and drafting the publication of a Guidance Document, providing guidance for interpretation of the Nelson Mandela Rules, focusing on the revised provisions and using other international standards, reports and recommendations of international and regional human rights bodies and good practice examples.

In order to fulfil this task, the Consultant will undertake desk research, participate in national/ regional consultations and draft the publication (see details below).

It is anticipated that the delivery of this project will take 50 full working days, 23 in 2016 and 27 in 2017.

### 4. Project partner:

The project is implemented in close collaboration with **Penal Reform International (PRI)** a leading civil society organisation in the field of the treatment of prisoners who has engaged intensively in the revision process of the Nelson Mandela Rules.

### 5. Expressions of interest:

Expressions of interest should be sent to Stephanie Selg: [Stephanie.Selg@odihr.pl](mailto:Stephanie.Selg@odihr.pl) until 20 June 2016, and should include:

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<sup>1</sup> Minor changes to those Terms of References may still occur before final approval.

- A detailed CV
- A letter of motivation, outlining in particular:
  - expertise in the field of human rights law
  - expertise with regard to prison management
  - research skills
  - experience with prison systems in various countries/ regions/ continents
  - proficiency in English and drafting skills
- Two unedited writing samples
- A short concept note (max 1 page) outlining the consultant's approach regarding structure, scope, content and ideas regarding the Guidance Document
- Availability during the project period
- Expected daily rate (Euros)
- Confirmation of the willingness and ability to travel

The project partners may split the contract between a human rights expert and a prison management practitioner in order to ensure both areas of expertise are covered satisfactorily.

## **6. Background:**

In May 2016, the ODIHR Anti-Torture Programme has started the **“Nelson Mandela Rules” Project**, in cooperation with Penal Reform International.

This project aims to improve penal systems and the treatment of persons deprived of their liberty in the OSCE region by promoting and supporting the effective implementation of the Nelson Mandela Rules by participating States. Following their recent adoption, efforts must be made at international, regional and national levels to make the new provisions known and ensure that they are integrated and incorporated into national legislation and regulations and that criminal justice authorities and administrations are fully trained in their practical application.

States bear a heightened obligation towards prisoners because when the state deprives someone of their liberty, it assumes duty of care. They are obliged to ensure that prisoners are treated humanely, that torture, cruel, inhuman or degrading treatment and punishment is prevented, and that access to justice is ensured. This requires concrete and up-to-date guidance on disciplinary measures and sanctions, solitary confinement, the use of restraints and the practice of (body) searches. It also requires efficient complaints and monitoring systems, alongside access to legal representation – all areas subject to the revision of the UN Standard Minimum Rules for the Treatment of Prisoners. The revised text, known as the “Nelson Mandela Rules”, provides greater protection for persons deprived of liberty, in particular from torture and other cruel, inhuman or degrading treatment or punishment, as well as more up-to-date guidance to penitentiary staff, prison administrations, monitoring bodies and relevant policy-makers.

All eight areas covered by the review are highly relevant with regard to the prevention of torture and other cruel, inhuman or degrading treatment and punishment. The revised Rules introduce the absolute prohibition of torture and ill-treatment as a basic principle. Modern notions of prison management have been recognised and prison administrations can now go to one reliable and authoritative source for information and guidance on good prison management. The revised areas include: the respect for prisoners’ inherent dignity and value as human beings; medical and health services; disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet; investigation of all deaths in custody, as well as any signs of allegations of torture or other ill-treatment of prisoners; protection and special needs of vulnerable groups; the right of access to legal representation; complaints and independent inspections; training of relevant staff to implement the Rules; and consideration of the ‘requirements and needs of prisoners with disabilities’.

However, like any international standard, provisions are formulated in general terms and hence further guidance is required on how they are to be understood. ODIHR therefore aims to provide guidance and assistance on the implementation of the new Rules, which have a direct bearing on the protection of prisoners from torture and other cruel, inhuman and degrading treatment or punishment.

## **7. Detailed description of tasks**

The Consultant will be involved in the following activities:

### **Activity 1: Desk research (July to December 2016)**

Between July and December 2016 the consultant will be working on a proposal for the structure of the Guidance Document liaising with the project partners, will be undertaking desk research, reviewing standards and documents.

### **Activity 2: Questionnaires (August 2016)**

The consultant will prepare a questionnaire, under the guidance of ODIHR, on specific (revised) rules and practical challenges to prison administrations through selected OSCE field offices.

### **Activity 3: Participation in regional/ national consultations (July to December 2016)**

Also between July and December 2016 the consultant will participate in national/ regional consultations set up by PRI and ODIHR respectively throughout 2016. The consultations are convened to identify Rules that require further guidance, identify and address barriers or challenges foreseen in the implementation of specific Rules, discuss any practical and concrete measures for implementation of specific Rules and identify good practices that can be shared.

This will include input and support in the preparation and participation at a sub-regional consultation in Warsaw with members of the prison administration and prison staff as well as representatives of relevant Ministries (Interior, Justice or Corrections) from the United States of America and Central and Western Europe and possibly Turkey (December 2016). The consultant will assist ODIHR to identify relevant practitioners and prison administration officials from the respective countries, to draft an agenda for the consultation and to prepare background material and topics to be discussed during the meeting with a focus on the national specifics and particularities.

Expected number of working days: 3-4 consultations of 3 working days, total of 9-12 working days (including travel)

### **Activity 4: Drafting of the Guidance document (January – May 2017)**

Based on the information gathered during the research phase, through the consultations, input and sources provided by ODIHR and PRI and responses to questionnaires, the consultant will develop/draft, in close co-operation with ODIHR Anti-Torture programme and PRI, a draft Guidance Document on the effective implementation of the revised Nelson Mandela Rules (see ToRs below).

### **Activity 5: Peer-review meetings (March 2017)**

The consultant will present the draft Guidance Document at a two-day peer-review meeting in Warsaw in March 2017, which is planned with eight selected experts (TBC). – Expected number of working days: 2

### **Activity 6: Finalization of the Guidance Document (June – August 2016)**

The consultant will incorporate into the draft feed-back received at the peer-review meeting and by ODIHR and PRI and produce a final version of the Guidance Document. The final version will be subject to review as per standard ODIHR procedures, including editorial checks.

### Activity 7: Accounting

Unless travel arrangements are made through ODIHR or PRI, the consultant will ensure proper documentation and invoicing of travel costs.

Activities	Schedule	Location
Desk-research	June – December 2017	Home-based
Questionnaire for prison administrations (and CSOs) in the OSCE region	August 2016	Home-based
Regional consultation (participation)	2 nights (between May – November 2016)	Astana (tbc)
Regional consultation (participation)	2 nights (between May – November 2016)	Tbilisi (tbc)
Regional consultation (participation)	2 nights (between May – November 2016)	Moscow (tbc)
Regional consultation (organisation and participation)	2 nights (December 2016)	Warsaw
Drafting of first draft of the Guidance document	January – May 2017	Home-based
Development of outlines/structure	January 2017	Home-based
Submission of first draft	1 March 2017	Home-based
Peer-review meeting	2 nights (March 2017)	Warsaw
Review of the Guidance document following the peer-review meeting and final document	By May 2017	Home-based
Editing, clearance and publication process	June – August 2017	Home-based

## 8. ToRs for Guidance Document

The Guidance Document (max. 150 pages) should focus on those provisions of the Nelson Mandela Rules that were revised in 2015, and with an emphasis on the prevention of and protection from torture and other cruel, inhuman or degrading treatment or punishment.

The audience for the Guidance Document are practitioners, e.g. prison administrations and penitentiary staff, but also relevant policy makers in order to assist in legislative reforms for the effective implementation of the revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), as well as monitoring bodies (including NPMs) to guide their assessment of detention conditions.

The Document should therefore be a practical, rather than "legalistic" guide. It should bear in mind the global nature of the Nelson Mandela Rules, and be conscious of the big differences in legal systems as well as resources and modalities of prison systems. Guidance provided should therefore be of added value to low, medium and high income countries in the OSCE region and beyond,

providing step-by-step measures without undermining the nature of the Rules as "minimum" rules. It should be of use globally, however have a specific focus on OSCE Member States.

The Document should be structured in a logical and clearly arranged way (which does not have to follow the structure in which the revision process had been set). Guidance provided should be based on existing other international and regional human rights and criminal justice standards, including OSCE commitments, relevant reports and recommendations of international and regional human rights bodies, good practice handbooks and manuals etc. Sources should be referenced in footnotes.

The Guidance Document should include information on:

- the rationale behind the respective Rule
- how provisions should be interpreted, in light of existing standards and good practice
- how to implement the Rules
- to which stakeholders they are addressed (e.g. who is the addressee of the respective Rule(s))
- good practice examples

The Guidance Document will be professionally designed and published in English, Spanish, French and Russian. It will be available in online and hard copy and disseminated widely by the project partners.

## **9. Role of ODIHR and PRI**

ODIHR and PRI will both collect and pass on to the Consultant guidance on implementation and good practices they come across through their networks as well as national and regional consultations. The outline and the content of the publication will be agreed and reviewed by ODIHR and PRI.

Throughout the research and drafting process, ODIHR and PRI will be keeping abreast of initiatives and new developments related to the new standards in order to co-ordinate with other actors and to avoid duplicating efforts.

## **10. Background on ODIHR Anti-Torture Programme**

ODIHR's work on torture prevention includes a report *The Fight against Torture* that analyses OSCE-wide experiences in this field. Assistance to law enforcement and other criminal justice actors in mainstreaming human rights and the prevention of torture and other ill-treatment into their activities, and support to OSCE field operations, NHRIs and civil society organizations active in the field of torture prevention represent important avenues of ODIHR's work.

## **11. Background on the overall project**

The consultancy is central to Phase I in the delivery of a three-year project implemented by the ODIHR Anti-Torture Programme, in cooperation with Penal Reform International. The project seeks to strengthen the prevention of torture and other cruel, inhuman or degrading treatment or punishment in places of detention across the OSCE region through the implementation of the revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

**Phase I** of the project aims at the development and publication of a Guidance Document, providing guidance for interpretation of the Nelson Mandela Rules, focusing on the revised provisions, using

other international standards, reports and recommendations of international and regional human rights bodies and good practice examples.

**Phase II** of the project, which will be subject to separate contracting, will be dedicated to the development of a targeted, needs-based and operational training programme, based on the Guidance Document. The tools will include a training curriculum, a trainer's guide and a corresponding training of trainers (ToT).

## **12. Qualifications**

- Advanced university degree (Master's degree or equivalent) in law, political science, international relations or other disciplines related to human rights and prison administration. A combination of relevant academic qualifications and extensive experience may be accepted in lieu of the advanced university degree.
- A minimum of 12 years of relevant professional experience in the field of human rights; development and delivery of human rights materials and training courses, including to police:
- Professional experience in providing consultancy services aimed at developing Guidance documents and human rights methodologies;
- Professional knowledge of English and excellent drafting skills