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## VISITING EXPERTS' PAPERS

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### IMPROVING THE QUALITY OF LIFE AND PROTECTING HUMAN RIGHTS IN CORRECTIONAL INSTITUTIONS

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#### I. INTRODUCTION

This paper is a supplement to a lecture that will be provided to UNAFEI for its 183rd International Senior Seminar (Management of Correctional Facilities in the 21st Century – Focusing on the Nelson Mandela Rules) in January 2024. The lecture aims to explore the importance of the Standard Minimum Rules for the Treatment of Prisoners 2015, also known as the Mandela Rules. And how the Mandela Rules can be used to mitigate the negative impact on conditions and treatment of detainees caused by the numerous challenges prison systems have to deal with worldwide.

Protecting the rights of prisoners has never been easy. The Universal Declaration of Human Rights of 1948 did not specifically refer to prisoners, although the rights it laid out—including the prohibition of torture, the right to a fair trial and the presumption of innocence—implicitly covered them. Seven years later, in 1955, the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Standard Minimum Rules for the Treatment of Prisoners. This was an important start, and in 2015, the United Nations General Assembly adopted expanded rules, known as the “Nelson Mandela Rules”, in honour of arguably the most celebrated prisoner of the twentieth century.<sup>1</sup>

The lecture will present, while many detaining authorities experience complex challenges like overcrowding, lack of human and material resources and sometimes situations of conflict, how the Nelson Mandela Rules could be used to address these challenges and to guide prison managers to improve the treatment of detainees and conditions of detention. In this paper and within the associated lecture we will examine several components of the Mandela rules as well as accountability mechanisms and the important role of oversight. The lecture will explain the position of ICRC and its work in detention for the past 100+ years in over 80 countries. Finally, some general thoughts will be shared and discussed on the opportunities the minimum standards for the treatment of detainees could offer.

#### II. THE INTERNATIONAL COMMITTEE OF THE RED CROSS

At the core of the work of ICRC are the visits to persons deprived of liberty and the interactions we have with their families. And, of course, ICRC interaction with the staff of the over 200 different detaining authorities that ICRC engage with around the world who manage prisons, police lockups, immigration facilities, military detention, and Prisoner of War Camps. Globally in 2022, ICRC conducted 2,930 visits to 939 places of detention in 78 ICRC operational contexts around the world.

Why does ICRC visit detainees and engage with prison authorities? We all know that due to the very nature of imprisonment, detainees are vulnerable, they are vulnerable to the environment in which they have been imprisoned, vulnerable to unsafe conditions of imprisonment and vulnerable to a variety of physical and mental health issues that combine to undermine dignity and humanity. Unfortunately, globally, we have seen little progress in reducing these vulnerabilities in recent years. At the policy or political level, a key barrier

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<sup>1</sup> UN Andrew Glimour Assistant Secretary-General for Human Rights and Head of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in New York.

to progress is the continuing over-reliance on incarceration<sup>2</sup> for those alleged to have committed crimes and those found guilty.

This global policy often remains disconnected from the evidence base which suggests that investment in basic living conditions, improved treatment and keeping people out of custody<sup>3</sup> would benefit society.<sup>4</sup> Investment in criminal justice continues to be primarily focused on policing,<sup>5</sup> resulting in insufficient investment in prevention, courts, child-appropriate justice, and prison and probation services. Meanwhile, outdated legislation and infrastructure, and non-evidence-based practices are tolerated and remain clear impediments to meaningful reforms. As a result, the world prison population, following a brief decline at the start of Covid, is continuing to increase,<sup>6</sup> and prisons remain dangerously overcrowded.<sup>7</sup> Although this is not just a numbers game.

The ICRC<sup>8</sup> continues to witness the human consequences of overcrowding in the vast majority of the places of detention where we visit. This includes:

- Detainees who can't sleep or breathe properly because of the overwhelming heat and humidity of cells packed far beyond capacity.
- Sanitation systems that have collapsed due to overuse.
- Water, food, and medicine that are inadequate in both quantity and quality.
- Families disconnected because of distance, transport and communication costs, and demand that outstrips supply.
- People going days or weeks without access to open air or health services due to the lack of prison staff to unlock and escort them.

This sadly remains the lived reality of many persons deprived of liberty whom the ICRC visits. And this does not even include the situation of some detainees deliberately subjected to torture, including sexual violence, and other forms of ill-treatment in the early stages of detention.

Fortunately, the international community has provided guidance on the minimum that must be done. The Convention against Torture and its Optional Protocol, Nelson Mandela Rules, Bangkok Rules, Tokyo Rules, Havana Rules, and Beijing Rules and many, many other standards and norms are clear. On overcrowding, a practical way forward was already set out ten years ago in an ICRC–UNODC collaboration on the Handbook on Strategies to Reduce Overcrowding in Prisons.<sup>9</sup>

The theme of the UNAFEI 183rd International Senior Seminar is particularly appealing for humanitarian organizations working in places of detention around the world. But in fact, all actors, including national detaining authorities, researchers and all prison and corrections professionals are working to achieve the main objective: assisting people deprived of their liberty to allow the realization of the criminal justice process, secure the community, and facilitate the social reintegration of detainees.

<sup>2</sup> Causes of prison overcrowding Tapio Lappi-Seppälä Director, National Research Institute of Legal Policy, Finland

<sup>3</sup> The Growth of Incarceration in the US Jeremy Travis, Bruce Western, and Steve Redburn, Editors National Academies of Sciences, Engineering, and Medicine. 2014. Chapter 5 The Crime Prevention Effects of Incarceration page 155

<sup>4</sup> Want to Reduce Crime? Start with Funding Our Communities Gina Clayton-Johnson and Thea Sebastian attorneys <https://www.newsweek.com/want-reduce-crime-start-funding-our-communities-opinion-1613995>

<sup>5</sup> Human Rights Watch Why More Police Funding Is No Route to Public Safety <https://www.hrw.org/news/2022/06/21/why-more-police-funding-no-route-public-safety>

<sup>6</sup> Roy Walmsley, World Prison Population List, 11th ed., Institute for Criminal Policy Research, London, 2016, p. 15

<sup>7</sup> World Prison Brief, “Highest to Lowest – Occupancy Level (Based on Official Capacity)”, available at: [www.prisonstudies.org/highest-to-lowest/occupancy-level?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=All).

<sup>8</sup> ICRC Statement – HRC Side Event panel “Prison and Justice Sector Reform and Human Rights” Geneva, 28 February 2023 Terry Hackett ICRC Head of Unit Persons Deprived of Liberty Geneva

<sup>9</sup> UNODC Handbook on strategies to reduce overcrowding in prisons. In cooperation with the International Committee of the Red Cross.

### III. THE MANDELA RULES

In 2015, the United Nations General Assembly adopted expanded rules, known as the “Nelson Mandela Rules”. The United Nations Office on Drugs and Crime (UNODC) was the agency leading the revision process. The United Nations Office of the High Commissioner for Human Rights (OHCHR) ensured that the revised rules reflected international human rights standards adopted since the 1950s. As a result, the Mandela Rules<sup>10</sup> provide States with detailed guidelines for protecting the rights of persons deprived of their liberty, from pre-trial detainees to sentenced prisoners.

The Mandela Rules<sup>11</sup> 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. They offer detailed guidance on a wide variety of issues ranging from disciplinary measures<sup>12</sup> to medical services.<sup>13</sup> For example, they prohibit the reduction of a prisoner’s food or water, as well as the use of instruments of restraint that are inherently degrading or painful, such as chains or irons.

The Mandela Rules restrict the use of solitary confinement<sup>14</sup> as a measure of last resort, to be used only in exceptional circumstances. Mandela found solitary confinement to be “the most forbidding aspect of prison life. There was no end and no beginning; there’s only one’s own mind, which can begin to play tricks”.

The Nelson Mandela Rules emphasize that the provision of health care for prisoners is a State responsibility, and that the relationship between health-care professionals and prisoners is governed by the same ethical and professional standards as those applicable to patients in the community.

### IV. IMPROVING THE QUALITY OF LIFE AND PROTECTING HUMAN RIGHTS IN CORRECTIONAL INSTITUTIONS

The Mandela Rules serve as a comprehensive set of guidelines for the treatment of prisoners and the management of correctional facilities. To use these rules effectively, various stakeholders, including governments, correctional authorities, legal professionals, human rights organizations and the broader community, would be able to take specific actions. By actively incorporating the Mandela Rules into legal frameworks, promoting awareness and advocating for their implementation, the rules will contribute to a correctional system that prioritizes human rights, dignity and rehabilitation.

Advocating for implementation also includes education for staff of the criminal justice system, regular monitoring and evaluation by establishing oversight mechanisms to ensure compliance. At the same time, it would be important to hold those accountable who violate the Mandela Rules and ensure that legal professionals are aware of the Mandela Rules. To assess their effectiveness and to identify areas for improvement, data collection and research on the implementation of the Nelson Mandela Rules would be equally important.

Improving the quality of life and protecting human rights in correctional institutions is essential to adopt a fair and just prison service. To achieve this, effective rehabilitation programmes, safe and humane living conditions, staff training and transparent and accountable governance should be implemented. Detaining authorities should also regularly review their policies keeping them aligned with evolving standards and best practices in correctional management. By using the Nelson Mandela Rules, prison services and society work towards a correctional system that respects human dignity and contributes to the overall well-being of both inmates and communities.

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<sup>10</sup> The United Nations Standard Minimum Rules for the Treatment of Detainees.

<sup>11</sup> Mandela Rules: Rules of General Application Basic Principles, Rule 1.

<sup>12</sup> Mandela Rules: Restrictions, discipline, and sanctions, Rule 36-Rule 47.

<sup>13</sup> Mandela Rules: Health-care services, Rule 24-Rule 35.

<sup>14</sup> Mandela Rules: Restrictions, discipline, and sanctions, Rule 45.

## V. HOW TO ENSURE ADEQUATELY IDENTIFYING AND RESPONDING TO DETAINEES' NEEDS?

Whatever detaining authorities plan in the daily management, such as food and nutrition, infrastructure, health and discipline management, they should be thoughtful that generic solutions might be harmful to people. Even if they seem convenient to the majority, they might bring severe damages to some. This should not be the purpose of detention management.

In any place of detention, it will be quite impossible to provide specific support to each person. In a detention centre holding hundreds of inmates, it will be utopic to ask them all for separate menus. But by triangulating data, it can be possible to adapt as much as possible to the needs of everyone, through different options. Detention-system managers should feel accountable to those they are taking care of. The examples below are describing Accountability to the Persons Deprived of Liberty<sup>15</sup> and how to ensure this most effectively. Detainees do understand the daily situation, and this should be the rationale behind a constructive dialogue detaining authorities should have with them. Involvement is great, but listening to them is a must!

The Accountability to the Persons Deprived of Liberty approach in detention:

- People-centric approach – never losing sight of the people you are serving, the detainees and community.
- Using power responsibly – due to this position, prison services have an ethical obligation to exercise power in a responsible way, among other things by considering and being held accountable to those who are affected by the use of power, the persons deprived of their liberty.
- Understanding problems, not just needs. By making informed and nuanced needs assessments including the viewpoints of the detainees, to better address the needs of the detainees.
- Ensuring a responsible use of power through a people-centric approach is an effective way of building trust and acceptance between people.
- In situations of deprivation of liberty, mutual trust between detainers and detained, authorities and detainees, promotes an environment of dynamic security.

## VI. CONCLUSION

The collective knowledge is available, but what will it take to achieve the commitments set out in the Nelson Mandela Rules? First, we must collectively move from words to action, and this should start from acknowledgement that the only way to achieve results in rehabilitation and reintegration lies in placing dignity and humanity at the core, which means tackling overcrowding and improving the treatment of detainees. It also means that states should make meaningful and sustainable investments in non-custodial responses that could be used before and after conviction.

Further on, when people are detained, investment should be made in the maintenance and repair of infrastructure, provision of sufficient food and clean water, delivery of health outcomes that are equivalent to those in the wider community, and facilitating family contact both face-to-face and by leveraging technology. Obviously, none of this is possible without investment in the funding and training of sufficient prison staff. They are critical to the State's ability to fulfil its duty of care towards persons deprived of liberty.

We must also proactively design mitigating measures in relation to new and emerging risks and trends specific to places of detention and criminal justice systems. Many parts of the world are facing conflict, climate change, food insecurity, the increasing cost of basic necessities and the reality that places of detention

<sup>15</sup> ICPA Conference, 22-27 October 2023, HUMANITY IN DETENTION: What about the voice of people deprived of liberty, Terry Hackett, ICRC, Head of Persons Deprived of Liberty Unit, Geneva.

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remain highly susceptible to the next pandemic. This alarming combination will increase the vulnerability of persons deprived of liberty in many states around the world. Action on this would be imperative.

Finally, detaining authorities need to increase their attention to the voices of the people with lived experience in and in relation to places of detention. It is only by listening to those most affected by deprivation of liberty that we can fully understand the potential or real impact of incarceration on the dignity and humanity of those detained, their families and friends.

For all these action points the Nelson Mandela Rules do provide excellent guidance to achieve the commitments set out in binding conventions and recommendations.

Nelson Mandela once said,<sup>16</sup> “A good head and good heart are always a formidable combination”. Effective leaders understand that a balance between intellect and compassion is essential. A good head, representing intelligence and strategic thinking, allows leaders to make informed decisions and set clear goals. A good heart, symbolizing empathy and concern for others, enables leaders to connect with their teams, inspire trust and foster a positive organizational culture.

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<sup>16</sup> Nelson Mandela, *Higher Than Hope* (authorized biography), 1991.