

CORRECTIONAL INSTITUTIONS IN MALAYSIA: IMPLEMENTATION OF THE NELSON MANDELA RULES

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I. INTRODUCTION

The Federal Constitution of Malaysia is a legal document that focuses on the country's governance pattern and protects the people's fundamental rights in ensuring the harmony and stability of the country. All laws in Malaysia are based on this constitution and serve as a guide in every behaviour of Malaysians, especially in Section 2, Article 3 to Article 13. However, there are a few Malaysians who abuse this privilege to the point that they commit criminal offences, either petty or serious crime.

Every action that leads to a criminal offence definitely has a specific motive or agenda. A basic principle suggests that there are two elements which must be present in order for a crime to exist, and delineates between a physical act which occurred and caused a criminal outcome (*actus reus*), and an element of fault or intent (*mens rea*) (Coke, 1797). Every criminal offence will be judged through the court process starting from the process of accusation until the sentence in prison. However, every mistake made can be prevented and cured not only through one's own actions, but also by getting support and encouragement from family members, the community and the government.

This paper discusses the role of the department responsible for managing prisoners in Malaysia, namely the Malaysian Prisons Department. In addition, this paper discusses laws and regulations, total number of staff, issues that have been faced and some of the programmes that have been planned. In the last part, this paper will discuss the practices of the Nelson Mandela Rules in Malaysia and some recommendations.

II. CORRECTIONS IN MALAYSIA

A. The Malaysian Prisons Department

Correctional services in Malaysia are overseen by the Malaysian Prison Department, which operates under the Ministry of Home Affairs. The main goal of these services is to provide a safe and secure environment for both inmates and staff while also promoting rehabilitation and reintegration into society (Mokhtar et al., 2023). There are 39 prisons in Malaysia at the moment (Bernama, 2023). Malaysian jails have a long history dating back nearly 225 years – the same age as many other prisons around the globe. Malaysia's current prison system was brought over from the British (Omar, 2014). History has it that the prisoners of the Prison Cornwallis, the first jail established in Malaysia in 1790, were compelled to work as forced labourers, breaking stones and bricks to construct roads, cities, forts and other structures.

In addition to custodial services, the department also offers various educational and vocational programmes to support the rehabilitation process. These include skills training, academic courses and religious counselling. Today, the Malaysian Prisons Department has prison officers consisting of various educational backgrounds such as psychology and so on. Open-minded prison officers are able to work together with the department in an effort to help rehabilitate prisoners (Mokhtar et al., 2023). In addition, the Malaysian Prison Department nowadays also has all the necessary and sufficient facilities to carry out its duties compared to the past. Next, the Malaysian Prisons Department also provides various rehabilitation programmes for prisoners in prisons to intensify their efforts to produce productive prisoners. The department also collaborates with other government agencies and NGOs to support inmates in finding employment and housing upon release.

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B. Laws and Regulations

The Department of Prisons carries out its duties as an institution of imprisonment and rehabilitation. Acts and regulations that have been adopted by the Malaysian Parliament apply to Malaysia (Anon, 2012). The Malaysian Prisons Department is authorized by acts and regulations to lawfully detain an individual as a prisoner and carry out rehabilitation programmes for them. The relevant acts and regulations are listed below.

1. Prison Act 1995

This act is also known as Act 537. It became effective on 18 January 1996 after the amendment of the Prisons Ordinance 1952. It consolidated and amended the laws in respect of prisons, prisoners and general principles of prison administration and application of regulations (Hashim et al., 2018).

2. The Children Act of 2001

The implementation of this Act was on 1 August 2002, which replaced the Children's Court Act 1947 (Amended 1972). The purpose of this act is to safeguard children's rights. This Act was revised in 2016, and some additions and renewals have been made (Hashim et al., 2018). Horowitz (2000) mentioned that child offenders in general have better prospects for rehabilitation compared to adults for a variety of reasons. One of the main reasons is because children have a lower guilt-factor than adult offenders.

3. The Standing Order of the Chief Director of the Prison

The Standing Order grants authority to the Director General in accordance with the Prison Act of 1995, section 12. The Director General may make any standing order pertaining to the management of imprisonment when he or she exercises power (Hashim et al., 2018).

4. United Nations Standards Minimum Rules for the Treatment of Prisoners (SMR)

The First Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, introduced the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) in 1955. This document was authorized on 31 July 1957, and it was revised on 13 May 1977, with the intention of establishing a single set of general guidelines for the administration of prisons, the principles guiding the provision of services to inmates and other relevant topics (Official Portal, Malaysian Prison Department, 2021). When the General Assembly adopted the revised SMR in 2015, almost 35% of the Rules, it also decided that the Rules should be known as the Nelson Mandela Rules, in honour of Nelson Rolihlahla Mandela, the former President of South Africa. He spent 27 years in prison for his struggle for global human rights, equality and democracy.

C. Staff

Based on the statistics given by the Commissioner General of Prisons, Malaysia, Nordin Muhamad, until 29 September 2023 the current total strength of the Malaysian Prisons Department staff is 16,475 people throughout the country, while the total number of offenders currently receiving prison sentences is about 75,565 people, exceeding the total capacity of 69,816. In 2022, the recidivism rate of 18.6% was reached, and the government is aiming to reduce this to 10% in the coming years. Also, 1,480 vacancies need to be filled, involving 1,300 uniformed members and officers and 180 non-uniformed staff (Hamid, 2023).

The Training Centre is one of the parts of the Malaysia Prison Department that is responsible for producing trained officers and staff through appropriate training/courses for officers and staff, either short-term or long-term courses. The objectives of the Training Centre are to deliver a high degree of professionalism and skill to influential members, to create a workforce that is competent and disciplined in order to provide high-quality work and to develop moral principles and optimistic outlooks.

D. Issues

Like other countries in the world, Malaysia faces challenges in its correctional services, such as overcrowding and inadequate resources. Efforts are being made to address these issues, including the construction of new facilities and implementing alternative sentencing methods. Overall, Malaysia's correctional services strive to provide a holistic approach towards rehabilitation and reintegration for inmates while maintaining public safety.

Furthermore, ensuring that prison staff possesses the necessary competence to effectively conduct

counter-narrative and religious classes remain a key concern. The success of rehabilitation efforts hinges on the skills and abilities of officers in providing guidance and instruction to the inmates. So, the prison department must ensure that their officers are well trained.

The Prime Minister of Malaysia announced the 2024 budget in July 2023, whereby RM15 million to rehabilitate the Prison Department's quarters and facilities will be provided. Based on the statement given by the Minister of Home Affairs in January 2023, the government is improving asset and logistics capabilities to create a conducive work climate in the Malaysian Prison Department. From the speech of the Commissioner General of Prisons, Malaysia said that for 2024 new openings of Community Correctional Centers, County Parole Stations and also Lahad Datu Prison shows that the improvement of the prison department to ensure the inmate's comfort is guaranteed.

E. Programmes

Many programmes have been implemented by the Malaysian Prison Department, which aim at aiding in the recovery process of prisoners. The successful reintegration of inmates into society is crucial for reducing recidivism rates and fostering a safer community. The relevant programmes are listed below:

1. The Human Development Programme (HDP)

The Human Development Programme (HDP) is a comprehensive recovery system that covers all exercise and spirituality. The programme was first made available in February 2002. HDP was implemented by placing a strong focus on the development of discipline, which was followed by character development to help offenders regain their sense of self and identity (Saad, 2015).

Implementing the HDP, which consists of four phases – orientation, character strengthening, skills and pre-independent — on every offender serving a prison sentence aims to shape the character of the offender or resident through an efficient and successful rehabilitation system, enabling them to return to society as accountable individuals and productive members of society based on attitude formation, skills and knowledge.

2. Parole

The parole system in Malaysia was implemented in July 2008 after the amendment of the Prison Act 1995, which permits the release of a prisoner to serve any part of his sentence of imprisonment outside prison. As of 19 September 2023, the number of people on parole was 1,553 prisoners.

3. Halfway House

A halfway house was launched in September 2011 in Kuala Lumpur. The objectives of the establishment of this house are to provide opportunities for ex-prisoners in the process of reintegration in society, to sustain the recovery process and to provide temporary shelter. As of 19 September 2023, the number of prisoners involved in this programme was 361 prisoners.

4. Release on Licence

This programme will be done by home detention, especially for inmates with a sentence of 4 years or less, consisting of categories of offenders with chronic diseases, the elderly, the disabled and pregnant mothers. These groups are given the privilege to apply for home detention to enable them to live with their families, seek medical treatment and other appropriate reasons. As of 19 September 2023, the number of prisoners involved in this programme was 1,436 prisoners.

5. Transfer of Prisoners (ToP)

Another new programme that has been announced by the Malaysian Prisons Department is Transfer of Prisoners. It focuses on the foreign prisoners who can be transferred to their country of origin to serve their remaining sentence in their home country. The same goes for Malaysia citizens who are serving sentences in other countries. This programme should have mutual agreement between both countries. Moreover, it also can be seen as humanitarian programme because they can get support from their family members.

6. ASEAN Regional Correctional Conference (ARCC) 2024

ARCC has been implemented from 21-23 January 2024 at the Malaysian Correctional Academy (MCA) Langkawi, Kedah, with the theme of transforming corrections. The conference aims to bring together the heads of all ASEAN prison services to discuss common challenges and share best practices. Moreover, it

encourages future collaboration, joint training and knowledge exchange between ASEAN Member States as well as provides a chance to engage with international organizations in prison reform.

F. The Nelson Mandela Rules in Malaysia

Applying the Nelson Mandela Rules in Malaysia would be a progressive step towards ensuring the protection of human rights and the well-being of individuals in detention, supported by the Prison Act 1995, Standing Order of the Chief Director of the Prison, Prisons Regulations 2000 and so on. These rules emphasize the importance of treating prisoners with respect, providing them with access to health care, education and vocational training, promoting their reintegration into society after release and prohibiting any form of torture or ill-treatment.

Implementing these rules in Malaysia would not only comply with international standards but also demonstrate our commitment as a nation to upholding human rights and create a more just society. By embodying the values of Nelson Mandela, we can enhance the rehabilitation and reformation process of prisoners, encouraging their successful reintegration into society.

Moreover, embracing the Nelson Mandela Rules would also contribute to Malaysia's efforts to combat overcrowding and improve the conditions within correctional facilities. By prioritizing the rights and welfare of inmates, we can create an environment that fosters rehabilitation and reduces the likelihood of recidivism as our target to reduce recidivism to 10% compared to 15% and above before this year (Bernama, 2022).

1. Rehabilitation: Mandela believed in the power of rehabilitation and education for prisoners. Similarly, the Malaysian Prisons Department focuses on programmes that help inmates learn new skills, access education and receive counselling, aiming to reform them and prepare them for reintegration into society. The rehabilitation of the juvenile offender and his reintegration into society are the two main goals of the rehabilitation theory. The initial step is to rehabilitate the child using a variety of techniques, including schooling, behaviour modification and cognitive restructuring. The second element is that the system must connect them to society, as society will be their guardians and rehabilitators.
2. Restorative Justice: Mandela's emphasis on reconciliation aligns with the concept of restorative justice, which aims to repair harm caused by crime by involving all stakeholders. The department might employ similar approaches, encouraging dialogue and mediation between victims and offenders to promote healing and understanding.
3. Human Rights and Dignity: Mandela was an advocate for human rights and dignity for all, including prisoners. The Malaysian Prisons Department emphasizes the humane treatment of inmates, ensuring their rights are respected while they serve their sentences.

These connections showcase how Mandela's principles of forgiveness, reconciliation and respect for human dignity can resonate with the objectives and practices of the Malaysian Prisons Department in rehabilitating and reintegrating inmates.

In order to achieve this, it is crucial that the relevant authorities, policymakers and stakeholders collaborate to review current practices and adapt them to align with the standards set forth by the Nelson Mandela Rules. By doing so, Malaysia can establish itself as a progressive country dedicated to ensuring justice, fairness and human rights for all its citizens. I strongly believe that the application of the Nelson Mandela Rules in Malaysia will have a positive and lasting impact on society. It will not only contribute to the well-being of prisoners but also foster a culture of empathy and respect for human rights.

The Nelson Mandela Rules are applied by the enforcement agencies in Malaysia such as the Malaysia Prison Department, Royal Malaysia Police (RMP), Immigration Department of Malaysia, Malaysian Anti-Corruption Commission (MACC) and others. In this paper, only two agencies are addressed: the Malaysia Prison Department and the Royal Malaysia Police (RMP). Some of the similar contents of the Nelson Mandela Rules are presented below.

Table 1: Content of Nelson Mandela Rules with Malaysia Prison Department and Royal Malaysia Police (RMP)

Num.	Content	Nelson Mandela Rules	Prison Act 1995 / Prison Regulation 2000	Lockup Rules 1953 (RMP)
1.	Separation of Categories	Rule 11	Regulation 34	Rule 6
2.	Accommodation	Rule 12	Regulation 4-9	Rule 14
3.	Searches of Prisoners	Rule 52	Regulation 11	Rule 8 & 22
4.	Visitors	Rule 58	Regulation 93-95	Rule 22

Based on the table above, the Nelson Mandela Rules are applied by RMP during the detention of the suspect. In terms of separation of categories, under Rule 6 of Lockup Rules 1953, suspects shall be categorized, having regard to their age, gender, character, personality, previous history and other factors as may be determined by the Officer-in-Charge. For accommodation, Rule 14 of Lockup Rules 1953 states that the suspects need to be informed by the Officer-in-Charge by determining any equipment or facilities that may be placed in a cell or dormitory. Rules 8 & 22 of Lockup Rules 1953 state that no suspects shall be searched except by a police officer who is of the same gender as the suspects to be searched. For visitors, under Rule 22 of Lockup Rules 1953, suspects can receive visits.

III. RECOMMENDATIONS

In order to ensure the Nelson Mandela Rules can be successfully implemented by the enforcement agencies, below are some recommendations.

1. The Probation System

The probation system plays a crucial role in facilitating the successful rehabilitation and reintegration of offenders back into society. By giving individuals the opportunity to serve their sentence under community supervision, we can focus on addressing the root causes of their criminal behaviour and provide them with the necessary support and resources to improve their lives. This reduces the likelihood of reoffending, ultimately contributing to a safer and more harmonious community. It serves as a valuable mechanism for rehabilitation, individualized support, cost-effectiveness, restorative justice and maintaining a fair and just society. By investing in and expanding the probation system, we can foster successful reintegration and contribute to the overall reduction of crime rates. In order to make this core a success in Malaysia, the necessary action is to revise and change the relevant laws in addition to creating new alternative punishments for prisoners.

2. Community Involvement

By engaging community members and organizations, we can provide a supportive network for inmates that promotes their successful reintegration into society upon release. This approach not only benefits the individual, but also has positive implications for the overall safety and well-being of our communities. There are several key benefits to involving the community in inmate rehabilitation. First, it provides inmates with opportunities for meaningful social interactions and connections outside the correctional system. Second, it allows for the provision of specialized services and resources that may otherwise be lacking within the correctional system. Third, it helps to reduce stigmatization and promote a more empathetic understanding of those who have been incarcerated.

3. Ratification in the United Nations Convention Against Torture (UNCAT)

Malaysia is among the 25 countries that have yet to ratify UNCAT as one of the international conventions that acts as a guideline to prevent any form of cruel and violent punishment and rehabilitation (Maidin, 2019). Why does UNCAT need to be implemented in Malaysia, and what is its importance? This convention provides a framework that is very effective in protecting and reducing the issue of violence, especially involving detainees (Hassan & Syed Annuar, 2023). So, Malaysia should become a State party in order to

conduct a transparent investigation, involving an official interrogation process, if there any allegations of torture.

4. Training and Education to the Prison's Staff Dealing with Inmates

Nelson Mandela emphasized the importance of treating all individuals with dignity and respect, regardless of their past actions. Implementing these principles by prison staff not only fosters a sense of humanity but also serves as a powerful example to inmates. By promoting empathy and compassion, we create an environment that encourages personal growth, encourages self-reflection and ultimately promotes better outcomes for all parties involved. Besides that, by practicing effective communication and maintaining an open dialogue with inmates, prison staff can establish trust and encourage responsible behaviour. This not only enhances safety within the facility but also creates an atmosphere conducive to personal development, reducing the likelihood of violent incidents.

5. Parolees to Take up Foreign Workers' Jobs

The government is looking at the possibility of using paroled prisoners in work programmes to offset the shortage of foreign workers in certain industries, especially the 7,000 inmates who are currently under the Community Rehabilitation Programme. In December 2021, in order to overcome a manpower shortage, the Federation of Malaysian Manufacturers (FMM) needs to replenish more than 600,000 foreign workers to help the industrial sector, particularly export-based companies (Muzamir, 2022). By using paroled prisoners, the shortage of manpower can be minimized.

6. "Know Yourself, Know Others" (KYKO)

The Malaysian Prison Department uses psychometric instrument tests, including an in-house tool known as "Know Yourself, Know Others" (KYKO). This tool can be used to assess inmates' behaviours, such as violence, pretence, lying, self-harm, and others, at the admission process. This tool will help the officers with placement, security measures, restoration, treatment plans and parole decisions among prisoners (Nordin, 2023).

7. Heart Rate Variability (HRV)

This biofeedback tool is a part of therapeutic interventions. These tools measure heart rate variability and provide feedback to help inmates regulate their physiological stress responses, fostering relaxation and emotional self-control. Biofeedback tools are integrated into individual or group therapy sessions, stress and anger management programmes or substance abuse treatment programmes (Nordin, 2023).

IV. CONCLUSION

The Malaysian Prisons Department is still dedicated to promoting the well-being of its inmates and has developed a number of programmes and activities to provide them with exposure prior to their release, making them more ready, self-assured and sociable. The Malaysian Prisons Department has implemented a number of proactive measures in the hopes that when released from prison, ex-offenders will be aware of the need to change, learn from their mistakes and become law-abiding citizens who benefit the community and the nation as a whole.

The role played by the government through the Ministry of Home Affairs in trying to shape the identity and comfort of the prisoners coincides with the Nelson Mandela Rules. For example, new openings of Community Correctional Centers, County Parole Stations and also Lahad Datu Prison. Also, 1,480 vacancies need to be filled in 2024. Moreover, in 2024 the government announced RM15 million to rehabilitate the Prison Department's quarters and facilities. Through the various programmes planned by the Malaysian Prisons Department, it also shows that the rehabilitation process for prisoners is given a lot of attention. Therefore, prisoners need to welcome this effort by giving their full contribution of energy and thinking, which can have a positive effect on themselves, their families and the community.

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