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JAIL MAIL

NELSON MANDELA DAY 2020: THE NEED TO MONITOR PRISONS

“The full contribution which our prisons can make towards a permanent reduction in the country’s crime-rate lies also in the way in which they treat prisoners. We cannot emphasise enough the importance of both professionalism and respect for human rights.

-President Nelson Mandela speaking to prison staff in South Africa in 1998

Dear Friends,

Greetings from CHRI!

Today marks the **102nd birth anniversary of Nelson Mandela**, the Nobel peace prize laureate and former president of South Africa, who spent 27 years of his life behind bars in inhumane conditions to fight for democracy, equality and human rights. Mandela saw the worst of prison life - solitary confinement, ban on visits with family, refusal to attend the funeral of his son and degrading living conditions. However, this could not deter him from raising voice for prisoners’ rights. Mandela is one of the first persons known in history to challenge the closed nature of prison institution. Even though he was not permitted to write about prison conditions in personal letters, he kept on writing to the prison commissioner about poor conditions and also campaigned to ensure that his fellow prisoners were provided the right to make individual complaints.

The Standard Minimum Rules (SMR) for the Treatment of Prisoners first adopted in 1955 by United Nations were revised in 2015. They were named the **Nelson Mandela Rules 2015** to honour the work and legacy of Mandela. The Rules, though not legally binding serve as the **minimum standards in terms of principles and practices for treatment of prisoners and prison management**. These rules cover all aspects of prison management from admission to release.

As COVID-19 took shape of a pandemic, prisons became the most vulnerable setting for an institutional outbreak. There has been wide recognition by the United Nations, World Health Organisation and other international bodies that prisons are prone to a virus outbreak due to high overcrowding rates and poor medical infrastructure. This stands true

globally as more than 120 countries have overcrowded prisons, where compliance with physical distancing norms and hygiene is difficult. Additionally, the State response to mitigate the spread of virus in prisons has also led to human rights aberrations in form of further restrictions on day to day entitlements of a prisoner.

In this milieu, as the Nelson Mandela Rules 2015 assume increased significance, the need of ensuring effective prison oversight cannot be overemphasised. Here, Rules 83 to 85, which entail a two-fold framework of prison inspection, are significant to address. With the **purpose of bringing transparency in prison functioning and protecting the rights of prisoners**, the Rules provide for internal inspections by administration and external monitoring by independent visitors.

In India, **senior prison officers** are mandated to visit prisons periodically to conduct internal monitoring under the state prison rules. For external monitoring, the statutory prison oversight mechanism called the **Board of Visitors**, comprising **official and non-official visitors** are mandated to conduct prison inspections regularly. Further, the Supreme Court and High Courts have time and again emphasized on the need for judicial oversight of prisons under which **senior judicial officers at the district-level** are also mandated to visit prisons periodically. The present situation necessitates that prisons are regularly monitored both by senior prison officers, as well as by external bodies such as Board of Visitors, National and State Human Rights Commissions and judicial officers. It is vital that the monitoring ensures that:

- There is no discrimination in healthcare services.
- Prisoners are kept in isolation only for medical purposes and on the recommendations of expert medical authority.
- The pandemic is not used as a justification for undermining human rights standards in prisons.
- Prisoners and staff have access to information and training with regards to protection against the disease.
- Prisons are implementing precautionary as well as emergency measures.
- Food, medical and other essential supplies are adequately available.
- Special needs of vulnerable categories of prisoners such as women, transgender, differently abled, mentally ill, foreign national prisoners, etc. are addressed
- Adequate support and care is provided for prison staff and their families against contraction of the infection.

In India, more than 1400 prisoners have tested positive of COVID-19 and at least six have succumbed to the disease. These numbers are increasing every day. In Assam in just one prison the number of positive cases has increased from 55 to 184 in the past two days. It is necessary now more than ever to ensure that prisons are constantly monitored, and effective oversight maintained by functionaries of the system.

To support this, and to ensure that prisons are providing an effective response to COVID-19 in prisons **CHRI has developed two checklists, to assist the internal and external monitors of prisons**, based on a Standard Operating Procedure (SOP) issued by the Ministry of Home Affairs (MHA), Government of India.

The **Checklist for Internal Monitoring** is a reporting tool for prison head offices to supervise the status of COVID-19 response in prisons under their jurisdiction. It includes *Infrastructure and Equipment, Identification and Administration of Suspected Cases, Health & Hygiene*,

Prisoners Intake and Prison Entry Procedure, Other Precautionary Measures, Staff Safety Measures, Discharge of Prisoners and Measures for Ensuring Welfare of Prisoners.

The **Checklist for External Monitoring** is an oversight tool to be used by independent oversight bodies such as Human Rights Institutions, Legal Aid Institutions, etc. or ad-hoc bodies for supervising COVID-19 response in prisons, such as High Powered Committees in India.

The checklists are designed keeping in mind the restrictions in physical monitoring. The oversight actors must also respect the ‘do no harm’ principle. In the context of COVID-19 pandemic, this would mean that nothing that may cause the spread of virus to prisons is done. While the Checklist for Internal Monitoring can be administered completely remotely, the Checklist for External Monitoring requires the monitor’s access to the prisoners for some information.

CHRI further recommends that where physical inspections are not possible, the external monitors must be provided access to prisoners via safe and confidential modes of communication such as telephones, or video conferencing.

As the essence of Mandela Day is to “make every day a Mandela Day”, the relevance of SMR goes beyond the pandemic. **CHRI calls upon its readers to ensure that prisoners are accorded their due dignity and their rights are protected.** Towards this, you can:

1. **As senior prison administrators**, adopt the checklist and ensure that internal inspections are conducted periodically in prisons within your jurisdiction.
2. **As the officer-in-charge of prisons**, raise awareness about the standards spelled out in the SMR especially on health & hygiene and living conditions among the prison staff and encourage them to think beyond the routine tasks and make prisons fully compliant to the Mandela Rules.
3. **As a prison monitor**, adopt the checklist and conduct independent monitoring of prisons in your jurisdiction and render any support that you can offer in compliance of the standards set in Mandela Rules.
4. **As a member of the civil society or media**, ensure that internal and external monitoring of prisons is done regularly in the prisons of your state and raise discussions and deliberations on the importance of prison oversight in public fora.

Write to us at chripisonsprog@gmail.com with your comments and suggestions. You can follow CHRI’s work during the pandemic and access the guidelines and statements prepared on several issues concerning prisons, policing and access to information [here](#).

Stay safe

Best Regards,

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