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Humanitarian consequences of overcrowding and legal responses in times of armed conflict*

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The presentation will define prison overcrowding and highlight the challenges to measure it at the national and international level. While overcrowding affects a large number of countries world-wide, it is usually compounded by situation of conflict and civil strife.

Based on the UNODC – ICRC Handbook on Strategies to Reduce Overcrowding in Prisons, the presentation will describe some of the most common humanitarian problems deriving from overcrowding, such as its negative impact on physical and mental health. Other frequent consequences of overcrowding like promiscuity; impossibility to separate different categories of prisoners; easier contact between first time offenders and organized criminal groups or gangs; interpersonal violence; and difficulties in implementing social reintegration programmes, will also be stressed.

Reference will be made to the Nelson Mandela Rules, as the international reference text on the treatment of prisoners.

Using the recent example of Niger in connection with the Boko Haram crisis, the presentation will then touch on some of the legal measures that

* The views expressed herein are those of the author and do not necessarily reflect the official position of the United Nations.

can be adopted to alleviate the problem of overcrowding and describe steps to prevent the conditions of detention from getting worse.

Prison overcrowding is generally defined with reference to the occupancy rate and the official capacity of prisons, i.e. it refers to the situation where the number of prisoners exceeds the official prison capacity.

The real challenge is how to calculate the prison capacity as there is no international definition of “space for detained person” and each prison system adopts its own criteria, often referring to the recommended minimum specifications by ICRC or the Committee for the Prevention of Torture (CPT)’s minimum standard for personal living space in prison establishments.²

Sometimes the capacity of a prison is still based on the design capacity determined when it was first planned or constructed. However, very often the original prison capacity may have lost all relevance as parts of the building might be condemned because of lack of maintenance, or common areas might have been turned into dormitories, or some cells might have been reserved for special prisoners. Frequently, prisons evolve throughout the years with areas being repurposed and “transitional” buildings being added. The official capacity of each prison is not always revised accordingly.

Overcrowding is a big challenge in many countries. In 2016, UNODC³ reported that, globally, among 198 countries for which data on prison capacity were available, as many as 115 countries (58%) had a rate of prison occupation above 100% of capacity (overcrowding); 79 countries (40 %) had a prison occupation rate above 120% (critical overcrowding); and as many as 51 countries (26%) were characterized by extreme overcrowding (above 150% of capacity).

There can be several causes for prison overcrowding. In 2013, UNODC and ICRC published the *Handbook on strategies to reduce overcrowding in*

² The CPT’s minimum standard for personal living space in prison establishments is: → 6m² of living space for a single-occupancy cell + sanitary facility → 4m² of living space per prisoner in a multiple-occupancy cell + fully-partitioned sanitary facility → at least 2m between the walls of the cell → at least 2.5m between the floor and the ceiling of the cell. See *Living space per prisoner in prison establishments: CPT standards* (CPT/Inf (2015) 44).

³ Commission on Crime Prevention and Criminal Justice, *World crime trends and emerging issues and responses in the field of crime prevention and criminal justice*, Note by the Secretariat, p. 21 (E/CN.15/2016/10).

*prisons*⁴, offering policymakers and prison practitioners a guide to assess the causes of prison overcrowding in each country and to identify the most appropriate countermeasures.

Among the causes of prison overcrowding, the Handbook highlights that prison overcrowding can also originate from a situation of conflict or it can get worse because of conflict. This can be described as a form of “crisis overcrowding” for which there can be various concurring reasons, such as the destruction of infrastructure forcing the concentration of all prisoners in fewer buildings; the arrest of large numbers of people imprisoned without charge; the entry into force of special laws resulting in the detention of more people; or the breakdown of criminal justice leading to fewer judgements and longer pre-trial detention.

From a humanitarian point of view, prison overcrowding is the cause of many problems. One of the most alarming consequences is the deterioration of the living conditions and the health of prisoners – both physical and mental. Typical manifestations are epidemics of infectious diseases (tuberculosis, cholera, typhoid fever, scabies, etc.) and an increase in the number of self-harm and suicides. Interpersonal violence usually increases given the promiscuity, tension and lack of classification and separation of the prisoners. Social reintegration programmes, such as schooling, vocational training and productive activities may be disrupted because of overcrowding as the available space for these activities is not enough for all prisoners. Furthermore, when most of the prison population is composed of pre-trial detainees like it is typical in case of “crisis overcrowding”, these are usually excluded from work and education and they while away idly.

For many prison administrations, the presence of extra prisoners does not translate into additional funding as budgets are allocated on a yearly basis. Thus, meagre resources are further stretched to provide food, water, medicines for more people. Prisoners may end up dying of hunger, malnutrition, preventable and curable diseases.

Safety and security in overcrowded prisons are also in peril. In many countries, the reaction is to lock up prisoners for longer hours and this fuels a vicious cycle of tension, aggression and tighter security. To survive, more vulnerable prisoners, like for example children and young people, first-time offenders, prisoners with mental health problems, etc., may end up seeking protection from charismatic prisoners, often belonging to organized

⁴ *Handbook on strategies to reduce overcrowding in prisons*, Criminal Justice Handbook Series, UNODC in cooperation with the International Committee of the Red Cross, New York, October 2013

criminal groups, gangs or affiliated to terrorist groups, thus getting close to more serious forms of criminality.

Working conditions for staff in overcrowded prisons are also challenging and dangerous. Corruption among staff is fueled by crisis situations as prisoners are ready to pay extra money to satisfy their basic needs in terms of safety, food, bedding, space, hygienic products and health care. At the same time, if prison staff is not well trained and sufficient in number, overcrowding may lead to the progressive erosion of official authority on prison sectors or the whole prison, which can be taken over *de facto* by powerful criminal groups.

Since December 2015, the Nelson Mandela Rules⁵ have replaced the Standard Minimum Rules for the Treatment of Prisoners of 1955 as the international reference for prison administrations world-wide. Further to their thorough revision, the Nelson Mandela Rules seek to «set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management».

Rule 1 stresses that «All prisoners shall be treated with the respect due to their inherent dignity and value as human beings». The Nelson Mandela Rules provide indications on the prisoners' basic needs, including accommodation, light, ventilation, temperature, clothing and bedding, food and drinking water, personal hygiene, access to open air and physical exercise and health-care services. In situations of “crisis overcrowding”, some or all of these requirements are not respected. It is important to remember that, in any circumstance, the act of depriving a person of his/her liberty always entails a heightened duty of care and protection by public authorities. Thus, their efforts should be directed at ensuring safety and security of all prisoners and at meeting basic humanitarian needs. It is important to manage crisis situations as soon as possible to avoid the development of chronic deficiencies.

One case of “crisis overcrowding” I followed is Niger, where almost “instantaneous” extreme overcrowding was caused by the mass arrests in connection with the attack perpetrated by Boko Haram (BH) in 2015 – 2016. After the state of emergency was declared in February 2015, large numbers of people suspected of association with BH were arrested by the armed forces in the region of Diffa near the Lake Chad. They were transferred almost 1,400 km away to Niamey undertaking gruelling journeys so that they could appear before the Specialized Judicial Unit that has exclusive jurisdiction on terrorism-related offences.

⁵ *United Nations Standard Minimum Rules for the Treatment of Prisoners*, General Assembly 70/175, adopted on 17 December 2015.

Within a few weeks, the ‘Maison d’Arrêt’ in Niamey, a run-down prison built in 1947 for 352 prisoners which, during my first visit in November 2013, was holding around 800 prisoners, reached 1355 and more. Two thirds of the prisoners were pre-trial detainees. When I visited the prison again in June 2016, the humanitarian and security situation had terribly deteriorated.

The Specialized Judicial Pole was having considerable difficulties in advancing with the cases as most people had been arrested hundreds of kilometres from Niamey without any evidence.

Kollo prison and Koutoukalé High Security prison, outside of the capital, received hundreds of BH prisoners as well. During my visit in June 2016, Kollo, which was originally a social reintegration centre, saw its population soar from 286 (November 2013) to 1,023 prisoners, 780 of which were crammed in one of the three modules because of their high-risk profile. Because of the extreme heat, prisoners were passing out in their cells at night and many could only survive if they slept in the courtyard outside.

Koutoukalé, known as the high security prison in the country, was already holding several prisoners accused of terrorist-related offences. However, in November 2013 it was a prison that was running at 50% capacity, while in June 2016 it hosted more than double the 250 prisoners originally foreseen, most of them awaiting trial.

According to unofficial figures provided by a senior judge in Niger, by March 2017 there were over 1,600 additional prisoners linked to the BH crisis. Many of them ended up spending more than two years next to hardened terrorists.

What were the measures undertaken to address the situation? Overcrowding is a complex problem requiring thought over solutions addressing causes throughout the criminal justice system. In the absence of the funding and the time required to build a new prison, some steps were taken to speed up the judicial proceedings of those in detention. Beside the humanitarian assistance provided by the international community to improve the prisoners’ nutrition and health care, some important changes were made to the structure of the Specialized Judicial Pool. In fact, a branch was opened in Diffa so that it could examine the cases of freshly arrested persons before transferring them to Niamey unnecessarily. This step immediately reduced the influx of prisoners to Niamey.

In June 2016, the criminal law was amended so as to decrease the seriousness of the offence of «association de malfaiteurs» (conspiracy) from “crime” to “délit”, thus simplifying the procedure for handling these cases.

Considerable assistance was provided by various international actors to support the work of the Specialized Judicial Pool. By July 2017, out of 1,000 prisoners that had been brought before the court, only 93 were convicted. Local communities were assisted to facilitate the return of released prisoners so as to avoid retaliation and other problems.

Convinced that humane conditions of detentions are closely intertwined with prison safety and security, in 2016 UNODC carried out prison security audits in the three prisons I mentioned earlier, issuing detailed and practical recommendations to address the main vulnerabilities in terms of security, while at the same time taking care of the most critical humanitarian aspects. It has also accompanied the development of a risk evaluation tool to assist the prison administrations of Burkina Faso, Mali and Niger in assessing the individual risk posed by each prisoner. Pilot teams of prison staff and social workers have been thoroughly trained on the interview techniques. This has led to the improvement of the classification of prisoners and, although the current overcrowded spaces hinder the proper separation of various categories of prisoners, the knowledge acquired by prison staff on the assessed prisoners has contributed to better security and posed the basis for more effective reintegration programmes.

One of the causes of the delays in the processing of the cases linked to the BH crisis was also the lack of legal assistance for most of the defendants. Another beneficial project by UNODC has involved 10 volunteers with legal background that, since July 2017, have followed up hundreds of cases pending before the Specialized Judicial Pool.

Other measures that could be considered to alleviate overcrowding in situations like Niger could include the release of prisoners on humanitarian grounds (elderly, sick, disabled, terminally ill prisoners, etc.) if the law allows it. Such categories of prisoners suffer particularly in overcrowded conditions.

To conclude, the situation in Niger has been the result of a specific crisis that has struck a country with limited resources and a struggling criminal justice system. The sudden overcrowding brought about by the BH crisis slowed down the initial prison reform steps that had been initiated with donors' support. Deadly prison attacks and escapes have led to a stronger focus on security to the detriment of the longer term modernization of the prison system. Hopefully, the crisis can be overcome so that security concerns do not overshadow the need for support to the reform of the prison system. Ideally, the prison system should be strengthened so that it is able to deal with crisis situations in the future.