

## **I: The International Covenant on Civil and Political Rights**

In 1976, Canada ratified the *International Covenant on Civil and Political Rights* (ICCPR), which is an international convention aimed at protecting individuals' civil and political rights.<sup>1</sup> By doing so, Canada formally recognized its legal obligation to implement the provisions of the ICCPR within its domestic laws.<sup>2</sup> Article 7 of the ICCPR states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment..."<sup>3</sup> The ICCPR further states in Article 10.1 that: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".<sup>4</sup> Additionally, the ICCPR at Article 10.3 states: "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".<sup>5</sup> In sum, these articles of the ICCPR speak to the prohibition against torture, the obligation to treat prisoners with humanity and dignity, and that the prison system shall be modeled in such a way that promotes rehabilitation, respectively.

## **II: The Nelson Mandela Rules**

In 2015, the United Nations General Assembly adopted the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, also known as the *Mandela Rules*.<sup>6</sup> The Mandela Rules are, in part, based on the obligations set out in the ICCPR described above. These rules adopted by the General Assembly, a body that represents the international community, are considered minimum standards for the treatment of prisoners.

## **III: Canada's Contravention of the Nelson Mandela Rules**

There are 122 Mandela Rules in total. Below you will find a selection of nine rules that highlight some of the ways in which Canada is in contravention of these minimum standards.

### **Rule 17:**

*All parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.*<sup>7</sup>

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<sup>1</sup> United Nations Office of the High Commissioner of Human Rights, "Status of Ratification: Interactive Dashboard", online: <<https://indicators.ohchr.org/>>.

<sup>2</sup> United Nations Office of the High Commissioner of Human Rights, "What the treaty bodies do", online: <<https://www.ohchr.org/en/treaty-bodies/what-treaty-bodies-do>>.

<sup>3</sup> United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations Treaty Series, vol. 999, at art. 7, [hereinafter ICCPR].

<sup>4</sup> *Supra* note 3, ICCPR, at art 10.1.

<sup>5</sup> *Supra* note 3, ICCPR, at art 10.3.

<sup>6</sup> United Nations General Assembly, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, 17 December 2015, A/Res/70/175, [hereinafter The Mandela Rules].

<sup>7</sup> *Supra* note 6, Mandela Rules, at r. 17.

### How Canada is Performing

In 2021, the Standing Senate Committee on Human Rights reported during their prison visits that some cells were not clean, with human feces, blood, and mold clearly visible on the walls.<sup>8</sup> They reported that the maximum security units appeared dark, dirty, and cramped, and prisoners were held in them for long periods of time.<sup>9</sup> Senators were told by prisoners that the penitentiaries were the cleanest they had been in years due to the extensive cleaning that preceded their site visits.<sup>10</sup> One prisoner indicated that the segregation range had been in desperate need of painting for years, and it suddenly became a priority when the penitentiary was informed of the Senators' visit.<sup>11</sup>

#### **Rule 22:**

*Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.*<sup>12</sup>

### How Canada is Performing

The Office of the Correctional Investigator (OCI) and the Senators have both expressed concerns about the quantity and quality of federal prison food.<sup>13</sup> Correctional Service Canada (CSC) has switched to a cook-chill model in which vast quantities of food are prepared up to two weeks in advance and frozen, to then be reheated after being shipped to the prisons.<sup>14</sup> Prisoners told Senators that they are always hungry, the food is of poor quality, and is often served cold or overcooked, deemed inedible by many.<sup>15</sup> Prisoners receive their last meal of the day at 4:00 pm.

#### **Rule 25.2:**

*The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner.*<sup>16</sup>

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<sup>8</sup> The Standing Senate Committee on Human Rights, "Human Rights of Federally Sentenced Persons" (June 2021), at p. 81, [*hereinafter* Standing Senate, "Human Rights"].

<sup>9</sup> *Ibid.*

<sup>10</sup> *Supra* note 8, Standing Senate, "Human Rights", at p. 83.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Supra* note 6, The Mandela Rules at r. 22.

<sup>13</sup> The Office of the Correctional Investigator, "Annual Report: 2018-2019" (25 June 2019), online: <<https://oci-bec.gc.ca/en/content/office-correctional-investigator-annual-report-2018-2019>>; *Supra* note 8. Standing Senate, "Human Rights", at p. 87.

<sup>14</sup> *Supra* note 8, Standing Senate, "Human Rights", at p. 87.

<sup>15</sup> *Supra* note 8, Standing Senate, "Human Rights", at p. 88.

<sup>16</sup> *Supra* note 6, The Mandela Rules at r. 25.2.

### How Canada is Performing

The structure of prisoner's health care in Canada is contrary to this rule, because this responsibility falls entirely under CSC's purview per section 86 of the *Corrections and Conditional Release Act*.<sup>17</sup> This means that health care providers are not acting in full clinical independence as they are employed by CSC.

#### **Rule 27.2:**

*Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.*<sup>18</sup>

### How Canada is Performing

In 2018, the OCI stated that, though CSC has purported to conduct a review, it failed to produce evidence demonstrating that its practices are in compliance with rule 27.2.<sup>19</sup> This instance demonstrates the need for transparency in the review process<sup>20</sup> to maintain accountability and trust in the justice system.

#### **Rule 43.1**

*In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement...*<sup>21</sup>

### How Canada is Performing

Prisoners are still being held in Structured Intervention Units (SIU) and other forms of segregation for prolonged periods of time. For example, research has shown that 10% of total SIU stays fall under the definition of prolonged solitary confinement.<sup>22</sup>

#### **Rule 45.1**

*Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority...*<sup>23</sup>

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<sup>17</sup> *Corrections and Conditional Release Act*, S.C. 1992, c. 20, at s. 86.

<sup>18</sup> *Supra* note 6, The Mandela Rules at r. 27.2.

<sup>19</sup> The Office of the Correctional Investigator, "Annual Report: 2017-2018" (29 June 2018), at p. 19, online: <<https://oci-bec.gc.ca/en/content/backgrounder-45th-annual-report-parliament>>.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Supra* note 6, The Mandela Rules at r. 43.1.

<sup>22</sup> Sprott and Doob, "Solitary Confinement, Torture, and Canada's Structured Intervention Units", (23 February 2021), online:

<<https://www.crimsl.utoronto.ca/sites/www.crimsl.utoronto.ca/files/Torture%20Solitary%20SIUs%20%28Sprott%20Doob%2023%20Feb%202021%29.pdf>>, at p. 3.

<sup>23</sup> *Supra* note 6, The Mandela Rules, at r. 45.1.

## How Canada is Performing

The OCI recently found that Bill C-83, which created the framework for SIUs, “...has failed to prevent the creation, use, or extension of segregation-like conditions”.<sup>24</sup> This finding was echoed by Senators, who found that CSC has acted unlawfully regarding SIU placements, especially in fulfilling the requirement of providing prisoners with meaningful human contact.<sup>25</sup> When asked about this requirement, CSC staff described that prisoners were able to do laundry, which does not meet the definition of meaningful human contact.<sup>26</sup> At Nova Women’s Institution, prisoners further corroborated these findings, stating that the changes to segregation enacted in Bill C-83 in fact increased reliance on segregation, and that recreation time and programming opportunities were reduced.<sup>27</sup>

### **Rule 57.1**

*Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.*<sup>28</sup>

## How Canada is Performing

CSC receives inmate complaints through a three-level grievance system.<sup>29</sup> In its 2018 *Ewert* decision, the Supreme Court of Canada described this inmate grievance system as ineffective, as Ewert’s concern regarding assessment tools not validated for Indigenous populations remained unresolved 18 years after his initial inmate grievance.<sup>30</sup> During the Senators recent visits to prisons, prisoners across Canada reported that the grievance system overall was dysfunctional,<sup>31</sup> and that they often have difficulty accessing the system, particularly due to fear of reprisal by correctional staff.<sup>32</sup>

### **Rule 61.1**

*Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider;*

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<sup>24</sup> The Office of the Correctional Investigator, “Backgrounder — 2021-2022 Annual Report of the Office of the Correctional Investigator Summary of Major Investigations, Findings, and Recommendations” (2022), online:

<<https://oci-bec.gc.ca/en/content/backgrounder-2021-2022-annual-report-office-correctional-investigator-summary-major>>.

<sup>25</sup> Senate of Canada, “Senators go to jail: When, why and what did they find?” (2022), at p. 7, online: <[https://sencanada.ca/media/lbcaty5i/220513\\_honkimpate\\_final2-med\\_res.pdf](https://sencanada.ca/media/lbcaty5i/220513_honkimpate_final2-med_res.pdf)>, at p.5, [hereinafter Senate of Canada, “Senators go to jail”].

<sup>26</sup> *Supra* note 25, Senate of Canada, “Senators go to jail”, at p. 5–6.

<sup>27</sup> *Supra* note 25, Senate of Canada, “Senators go to jail”, at p. 10.

<sup>28</sup> *Supra* note 6, The Mandela Rules, at r. 57.1.

<sup>29</sup> Correctional Service Canada, *Commissioner’s Directive 081:Offender Complaints and Grievances*, (2019), online: <<https://www.csc-scc.gc.ca/acts-and-regulations/081-cd-en.shtml>>.

<sup>30</sup> *Ewert v. Canada*, (2018) SCC 30.

<sup>31</sup> *Supra* note 25, Senate of Canada, “Senators go to jail”, at p.13.

<sup>32</sup> *Supra* note 25, Senate of Canada, “Senators go to jail”, at p.12.

*without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law...*<sup>33</sup>

### How Canada is Performing

Prisoners across Canada have stated that they experience difficulty accessing legal counsel upon initial placement in SIU, and for placement reviews. These difficulties include calls with counsel being cancelled because of prison staff shortages and outright lack of access.<sup>34</sup> Additionally, prisoners have expressed that correctional staff often have a lack of respect for lawyer–client confidentiality, such as through opening prisoner’s confidential mail.

### **Rule 71.1:**

*Notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases. The prison administration shall fully cooperate with that authority and ensure that all evidence is preserved.*<sup>35</sup>

### How Canada is Performing

It is mandatory to conduct a Coroner’s Inquest when an inmate dies in custody, but there is often significant delay because there is no time limit between death and holding an inquest.<sup>36</sup> For instance, Terry Baker was found unresponsive in her cell at Grand Valley Institution and later died on 6 July 2016 — the inquest is still yet to occur. It was originally scheduled for 11 April 2023, seven years after her death, but was postponed due to CSC failing to produce 600 pages of relevant disclosure to the Coroner.<sup>37</sup> CSC argued that the inquest could nevertheless proceed because the Coroner was given the “majority” of documentation.<sup>38</sup> Without full and complete disclosure, an inquest cannot be fairly and impartially conducted.

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<sup>33</sup> *Supra* note 6, The Mandela Rules, at r. 61.1.

<sup>34</sup> *Supra* note 25, Senate of Canada, “Senators go to jail”, at p. 9.

<sup>35</sup> *Supra* note 6, The Mandela Rules, at r. 71.1.

<sup>36</sup> The Government of Ontario, “Coroner’s Inquests” (11 July 2023), online: <https://www.ontario.ca/page/coroners-inquests#:~:text=There%20is%20no%20time%20limit.the%20convening%20of%20an%20inquest>.

<sup>37</sup> CBC News, “Missing documents delay inquest into death of Terry Baker at Kitchener, Ont., prison” (30 May 2023), online: <https://www.cbc.ca/news/canada/kitchener-waterloo/terry-baker-inquest-motion-hearing-cancelled-1.6859518>.

<sup>38</sup> *Ibid.*

#### **IV: The Group of Friends of the Nelson Mandela Rules**

The following items are Canada's and other Member State's assignments as part of The Group of Friends of the Nelson Mandela rules (Group of Friends), to which Canada opted into:

- i) Keeping the momentum which the adoption of the Nelson Mandela Rules created for prison management and reform by raising awareness of the rules as well as by promoting their practical application worldwide;
- ii) Convening events and expert discussions on priority and/or emerging aspects related to prison management and reform in the course of future sessions of the Commission on Crime Prevention and Criminal Justice, and facilitating common positions and/or draft resolutions, as appropriate;
- iii) Serving as a main support vehicle for the technical assistance delivered by the UN Office on Drugs and Crime under its Global Programme on Addressing Prison Challenges, including by means of financial, technical and/or political support, as appropriate;
- iv) Facilitating the widest possible involvement of Member States in the yearly celebrations of Nelson Mandela International Day (18 July) in order to promote humane conditions of imprisonment and the application of the Nelson Mandela Rules.<sup>39</sup>

#### **V: Requests**

Today, on Nelson Mandela Day 2023, we urge Canada to:

- i) Implement a comprehensive framework for fulfilling its responsibilities as a Group of Friends Member State, and in doing so, be transparent in its actions and reports.
- ii) Integrate the Mandela Rules into domestic law in order to attain international minimum standards, and in doing so, be transparent in its actions and reports.
- iii) Create immediate amendments to the Corrections and Conditional Release Act to define "solitary confinement" per the Mandela Rules and to prohibit prolonged solitary confinement.
- iv) Create further amendments to the Corrections and Conditional Release Act to implement the Mandela Rules into domestic federal laws.

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<sup>39</sup> The United Nations Office on Drugs and Crime, "The Group of Friends of the Nelson Mandela Rules", online: <<https://www.unodc.org/unodc/en/justice-and-prison-reform/nelsonmandelarules-GoF.html>>.