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Advancing Human Rights through International Prison Reform Hearing

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INTRODUCTION

Prison Fellowship and Prison Fellowship International were born out of the experience of the late Charles Colson, a former aide to President Nixon. Convicted for a Watergate-related offense, Colson served seven months in prison. During that time, he saw and experienced the difference faith in Jesus makes in people's lives. He became convinced that the real solution to crime is found through spiritual renewal.

When Colson walked into freedom, he had a new mission in life: To reach out to men and women behind bars, and give them the opportunity to turn their lives around through Christ. In 1976, Colson founded Prison Fellowship USA, which is today the nation's largest Christian nonprofit serving prisoners, former prisoners, and their families, and a leading advocate for criminal justice reform. As Senior Vice President for Advocacy and Public Policy for Prison Fellowship USA, I get to bring my experience as former speaker of the House in Michigan to bear on the work we do to advance restorative solutions in the context of the justice system in the United States.

Prison Fellowship USA's prison events, classes, and programs reach more than 365,000 prisoners each year. We have over 11,200 Prison Fellowship volunteers across the country who make it possible to serve people in prison and over 300,000 children through our Angel Tree program that provides Christmas gifts on behalf of incarcerated moms and dads. Located in 78 prisons in 26 states, Prison Fellowship Academies are our most intensive programs, designed to address criminogenic needs including anti-social cognition, anti-social companions, anti-social personality and temperament, family and marital relationships, substance abuse, employment, education, and recreation activities.

In 1979, Colson founded Prison Fellowship International, extending the mission and work beyond the United States, and following God's call to alleviate the suffering of prisoners and their families worldwide. In 1983, Prison Fellowship International received special consultative status with the Economic and Social Council of the United Nations.

Prison Fellowship International is the largest, most extensive association of national Christian ministries working within the criminal justice field. Each of the transdenominational national ministries is grounded in indigenous leadership and local funding. This grassroots presence enables Prison Fellowship International to minister to prisoners and their families in culturally relevant ways. Today, given the focus on international prison reform of this hearing, I have the privilege of providing some insights from the experiences and writings of my colleagues at Prison Fellowship International and other Prison Fellowship affiliates.

NELSON MANDELA RULES AND THE STATUS OF INTERNATIONAL PRISON CONDITIONS

The United Nations (“UN”) Standard Minimum Rules for the Treatment of Prisoners (SMRs) were adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the UN Economic and Social Council in 1957.¹ In December 2015, in order to incorporate correctional advances, a revised version of the Standard Minimum Rules was adopted unanimously by the 70th session of the UN General Assembly in Resolution.²

It is estimated that between 10.35 and 11 million individuals are held in prisons across the world.³ This is an increase of almost twenty-percent since 2000, with the female prison population alone having increased by fifty-percent over this period.⁴ The conditions faced by the millions of imprisoned individuals around the world vary widely based on the jurisdiction in which they are being held.

European countries such as Norway, Denmark, and Germany are often highlighted as standout examples of prison systems that more closely resemble an individual’s own home than a prison.⁵ Meanwhile, many other jurisdictions struggle to meet the standards in the revised Nelson Mandela Rules, having systems plagued by unsafe conditions, overcrowding, and mistreatment of individuals who are incarcerated.

Many countries around the world have prisons facilities with poor sanitation, inadequate access to food and water, and poor medical care. In the country of Ghana, only \$.40 of food rations are provided each day and unsanitary conditions within the prison resulted in an outbreak of Cholera.⁶ In Zambia, diseases such as tuberculosis and malaria are common. An estimated 27 percent of prisoners are living with HIV, which is more than double the rate for the general population.⁷

¹ Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/511, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No.1) at 11, U.N. Doc. E/3084 (1957), amended ESC. Res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 36, U.N. Doc. E/5988 (1977).

² G.A. Res. 70/175, U.N. Doc. A/RES/10/175 (January 8, 2016).

³ Roy Walmsley, World Prison Population List, Institute for Criminal Policy Research (11th ed. 2016), http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf.

⁴ Walmsley, *supra* note 3 at 15.

⁵ See e.g. Keramet Reiter, et al., *Denmark doesn't treat its prisoners like prisoners – and it's good for everyone*, The Washington Post (February 2, 2016), https://www.washingtonpost.com/posteverything/wp/2016/02/02/denmark-doesnt-treat-its-prisoners-like-prisoners-and-its-good-for-everyone/?utm_term=.d134c0e3efa5; Ellis Cose,

Germany's humane prison system, USA Today (November 4, 2015),

<https://www.usatoday.com/story/opinion/2015/11/03/germanys-humane-prison-system-us-incarceration-reform-column/75012752/>; John D. Sutter, *Welcome to the world's nicest prison*, CNN (May 24, 2012),

<http://www.cnn.com/2012/05/24/world/europe/norway-prison-bastoy-nicest/index.html>.

⁶ Samuel Adadi Akapule, *Bar prison conditions in Ghana: A peep into the Navrongo Prisons*, Ghana News Agency (October 1, 2014), <http://www.ghananewsagency.org/features/bad-prison-conditions-in-ghana-a-peep-into-the-navrongo-prisons--80520>.

⁷ Collins Musona, *Creating Healthier Prisons*, 104 FOOTSTEPS, 1, 8 (2018).

In America, our federal system is currently exceeding its capacity by 114 percent, while most states have a prison population that is just slightly below their operational capacity.⁸ Illinois has the worst overcrowding of state systems in the country at 138 percent, but this pales in comparison to prison overcrowding in other countries.⁹ Haiti has a prison population that exceeds its official prison system capacity by 455 percent and El Salvador exceeds its system capacity by 348 percent.¹⁰ This overcrowding is not restricted to the Western Hemisphere, with the Philippines, Chad, and Grenada also facing extreme overcrowding in their prisons of 436 percent, 232 percent, and 235 percent respectively.¹¹

Alexander McLean, the founder of the African Prison Project, reports that:

In countries in sub-Saharan Africa such as Uganda and Kenya, the population has grown massively in the last few decades. As a result, there has been huge growth in the number of people being sent to prison, and prison capacity simply has not kept up. Prisons are hugely overcrowded. This overcrowding puts a strain on all the resources. It means that prisoners often are not well fed and cannot always lie down to sleep in their cells at night. The prison service is under huge pressure and does not have sufficient funding to meet prisoners' needs.¹²

Overcrowding can result in increased illness, death, suicide, and may drive violence.¹³ For example, the central prison in Roumieh, Lebanon faced a violent riot after operating at almost double capacity.¹⁴

In 2013, Prison Fellowship International conducted a survey of its affiliates, asking whether they had engaged in activities to address poor prison conditions by providing gifts or services to prisoners, advocacy, or other interventions. 100 of the 125 affiliates responded, and seventy-nine percent of them said that they had done so in the last 12 months.¹⁵ This response demonstrates

⁸ E. Ann Carson, *Prisoners in 2016*, Bureau of Justice Statistics (January 2018), <https://www.bjs.gov/content/pub/pdf/p16.pdf>.

⁹ Carson, *supra* note 8 at 21.

¹⁰ Institute for Criminal Policy Research, *Highest to Lowest - Occupancy level (based on official capacity)*, Institute for Criminal Policy Research (2017), <http://www.prisonstudies.org/world-prison-brief-data>.

¹¹ Institute for Criminal Policy Research, *supra* note 8.

¹² Zoe Murton, *Transforming Africa's Prisons*, 104 FOOTSTEPS, 1, 6 (2018).

¹³ Esther van Ginneken, et al., *An ecological analysis of prison overcrowding and suicide rates in England and Wales, 2000–2014*, 50 Int'l J. L. Psychiatry 76 (January 2017); Craig Haney, *The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions*, 22 Wash. U. J.L. & Pol'y 265 (2006); Steven D. Levitt, *The effect of prison population size on crime rates: evidence from prison overcrowding litigation*, 111 Q. J. Econ. 319 (May 1996).

¹⁴ Reuters, *Inmates riot at Lebanon prison, hold guards*, Reuters (April 5th, 2011), <https://www.reuters.com/article/us-lebanon-prison-riot/inmates-riot-at-lebanon-prison-hold-guards-idUSTRE7343KJ20110405>.

¹⁵ Email correspondence with Dan Van Ness, Special Advisor on Restorative Justice for Prison Fellowship International (January 13, 2018).

both the prevalence of poor prison conditions worldwide and the importance of government and non-governmental organizations like Prison Fellowship affiliates partnering in response.

In addition to poor conditions and neglect, individuals held in prisons around the world also frequently face deliberate physical, psychological, and sexual mistreatment. Mistreatment is sometimes used as a means of exerting control or punishing individuals who are incarcerated. In North Korea, prisoners are routinely subject to severe beatings, electric shock, and confinement in small immobile cells.¹⁶ In 2012 the United Nations Assistance Mission in Afghanistan reported that it found evidence that “more than half of 635 detainees interviewed experienced torture and ill-treatment.”¹⁷ Incidents of mistreatment not only violate human rights but undermine the credibility of the justice systems within such countries.

RESTORATIVE JUSTICE AND OTHER PROMISING PRACTICES

While the status of international prison conditions can seem overwhelming, there are some promising practices and reforms I would like to highlight. For example, my colleagues at Prison Fellowship Zambia manage mobile clinics to teach prisoners about issues such as hygiene, nutrition, and HIV. The Prison Fellowship Zambia team provides informational leaflets translated into a variety of languages, however, in order to overcome the barrier of illiteracy, dramatic presentations and music are also used. A drama group visits prisons to present health messages using singing, drums, acting and picture demonstrations. Prison Fellowship volunteers multiply their reach by training prisoners as peer educators to run individual and group discussions on subjects such as HIV prevention. Many peer educators are HIV-positive themselves and have helped reduce the stigma of living with the disease.

Additionally, my colleagues at Prison Fellowship Zimbabwe worked tirelessly to repeal a law that prohibited children from visiting their incarcerated parents before 18 years of age. The story of siblings Ronald, Tsitsi, and Precious demonstrates the real-life impact of this reform. When their father was incarcerated, their mother suffered a debilitating stroke. Their mother moved in with her sister, who could provide care for her, but left the children to squat illegally in a two-room hut. “The most frightening thing was mum was not around,” recalls 13-year-old Ronald.¹⁸

Now enrolled in Prison Fellowship International’s child sponsorship program, the family’s situation has dramatically improved. Prison Fellowship Zimbabwe helped the children apply for government-funded housing, re-enroll in school, and the family receives regular food supplements. And now, with the visitation ban reversed, they are able, after over eight years of separation, to nurture their relationship with their father and begin a journey toward emotional healing.

¹⁶ Hollie McKay, *Defectors from North Korea describe concentration camp, daily life*, Fox News (June 21st, 2017), <http://www.foxnews.com/world/2017/06/21/defectors-from-north-korea-describe-concentration-camp-daily-life.html>.

¹⁷ Bureau of Democracy, *Human Rights and Labor, Report on International Prison Conditions*, U.S. Department of State (May 22nd, 2013), <https://www.state.gov/documents/organization/210160.pdf>.

¹⁸ Prison Fellowship International, *A Precious Reunion in Zimbabwe*, PARTNERLINK, 1, 1 (Fall 2017).

Finally, I want to spend some significant time discussing a promising approach and Prison Fellowship International's area of expertise: restorative justice. The modern restorative justice movement began around 30 years ago, but it draws from much older forms of justice from early Middle Eastern and Mediterranean civilizations that shaped Western culture. Those approaches to justice are still used by indigenous peoples around the world.

The United Nations has encouraged countries to use restorative programs. In July 2002, the United Nations Economic and Social Council adopted "Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters" to help countries adopt restorative justice into domestic criminal justice systems in ways that continue to respect the human rights of people responsible for crime and their victims.¹⁹ Prison Fellowship was an influential non-governmental organization working with the UN to develop and adopt these principles.

Restorative justice approaches crime differently than traditional criminal justice systems, recognizing the significance of crime goes beyond the law that has been broken and placing emphasis on the harm that has been caused. Restorative justice programs can be applied at a variety of stages, including as a preventative program before the crime occurs, as an alternative to the traditional criminal justice sentencing, as a mediation process post-sentencing where desired by the victim, and even as a dispute resolution method between prisoners in correctional facilities. Prison Fellowship International's Special Advisor on Restorative Justice Dan Van Ness estimates that the restorative processes are being used in at least 80 and likely over 100 countries, sometimes within the criminal or juvenile justice system, but also applied in other contexts such as school discipline.

When used an alternative to the traditional criminal justice sentencing, the case is referred by the police officer, prosecutor, or judge at some point in the process to a trained, impartial restorative justice facilitator. The facilitator explains the restorative process to the victims and person responsible for the crime and invites them to participate. If they agree to do so, they meet together with the facilitator to discuss what happened and how to respond. Participation in restorative justice is always voluntary. The purpose of the meeting is to provide a safe environment in which those directly impacted by the crime can talk about what happened, what the injustice was, and how the responsible party can make things right.

The agreements reached by victims, the person responsible for the crime, and the other participants demonstrate a recognition that the person who committed the crime has harmed the victim and community and that he or she must accept responsibility. There are a variety of ways for the responsible person to make amends:

- Apologies, when voluntary and genuine, can be very powerful and meaningful to victims. Restorative justice meetings often begin with a formal apology by the responsible party, but after listening to the victim about the impact of their actions, the responsible person often extends a second, more significant and personal apology.
- An agreement to change future behavior. For example, returning to school, participating in drug treatment, etc. Victims participating in restorative justice meetings often want both an apology and changed behavior.

¹⁹ See ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000).

- Compensation or restitution involves the responsible person agreeing to pay for at least some of the damage he or she has caused. This can be done by paying money, providing services, returning or replacing property, or in any other way the parties agree.

Parties to restorative justice may also develop additional ways of making amends that are unique to their circumstances and needs. Some of the above-listed forms of amends can be ordered by a judge. The judge may send the case to the restorative justice process and request the parties provide suggestions of what the restorative outcomes should be. As long as the parties' proposal advances the public interest, it could be incorporated into the judge's sentence.

Restorative justice is often more effective than the results of the traditional criminal justice processes. Researchers reviewing hundreds of studies that compared restorative justice with traditional criminal justice found the following:

- Restorative justice lowers repeat offending for many people, particularly individuals involved in violent crime and adults;
- Restorative justice reduces post-traumatic stress in victims,
- Restorative justice costs the government less when used as a diversion from prison;
- Restorative justice leaves victims and individuals responsible for crime more satisfied that justice was done; and
- Restorative justice doubles the number of cases brought to justice because it is much faster.²⁰

Because of this proven record, more and more countries are relying on restorative justice as a key part of their response to crime. For example, the first country to have used restorative justice as a major part of its justice system was New Zealand. For 25 years, New Zealand has handled all of its youth cases through restorative justice except for those involving serious violence. As a result, the country has been able to close courts and detention centers and youth crime rates have not risen during that time. New Zealand has now extended restorative justice as an integral option for judges to choose when appropriate in the adult criminal justice system.

While most restorative justice processes and programs take place outside prisons, there have been some innovative initiatives to explore how restorative justice can be applied in prisons. For example, some prisons offer paid work opportunities for incarcerated individuals with some of the proceeds going to their victims. Prisons in North America and Europe offer mediation meetings conducted by a trained facilitator after careful preparation of the prisoner and the victim. Additionally, some prisons have trained prisoners and prison officials in conflict resolution to help reduce conflicts and some have adapted their disciplinary programs so that they are more restorative and less adversarial in practice and objective.

Finally, victim awareness and empathy programs are designed to help prisoners understand the impact of crime on victims. For example, Prison Fellowship International's Sycamore Tree Project[®] brings groups of crime victims into prison to meet with groups of unrelated prisoners for eight weeks. The participants learn about the harm caused by crime and the meaning and importance of confession, forgiveness, making amends, and reconciliation.

²⁰ Lawrence W. Sherman & Heather Strang, *Restorative Justice: The Evidence*, The Smith Institute (2007), available at http://www.iirp.edu/pdf/RJ_full_report.pdf.

Prison Fellowship International has witnessed powerful transformation through the Sycamore Tree Project, which operates in 34 countries. Victims begin to see prisoners as people, not monsters, while prisoners begin to understand the human cost of their actions. In Lebanon, the program is transforming the prison culture. The corrections official in charge of an overcrowded prison described the facility as calmer and easier to run in the four months since Sycamore Tree Project started. “It had a disproportional effect because prisoners are taking what they learned and sharing it with other prisoners,” said Prison Fellowship International’s Dan Van Ness.²¹ Lebanon’s Sycamore Tree Project now has a course waiting list of 100 prisoners.

RESTORATIVE JUSTICE AND OTHER PROMISING PRACTICES

Prison Fellowship recommends the following as means of improving international prison conditions and criminal justice systems:

- Where there are known human rights violations of prisoners in other countries, incorporate these issues into ongoing discussions with international diplomats and dignitaries. Bolster programs that provide funding to countries who lack resources to ensure appropriate conditions.
- At the same time, we should highlight promising practices and excellent corrections professionals across the globe, offering to come alongside corrections staff who have a vision for promoting humane, safe, transparent, and effective prisons.
 - ▶ One way to achieve this goal is to encourage international delegations with relevant government and non-government actors, particularly corrections professionals, to tour prisons and other criminal justice entities for the purpose of sharing ideas, challenges, and best practices across jurisdictions.
- Take a broader approach to the impact of incarceration, recognizing the ripple effect on prisoners’ children and families, victims, and communities. Build and strengthen infrastructure to provide resources and support for all those impacted by crime and incarceration.
- Promote the use of restorative justice as an alternative to the traditional juvenile or criminal justice process and as a program and method of dispute resolution inside prisons by funding and highlighting more expansive programming, research, and marketing of best practices and outcomes.

²¹ Prison Fellowship International, *supra* note 18 at 2.