

Overcrowding: Nobody's fault? When some struggle to survive waiting for everyone to take responsibility

Vincent Ballon

Vincent Ballon has worked for the International Committee of the Red Cross (ICRC) for over ten years, predominantly in positions visiting persons deprived of their liberty. He is presently Head of the Unit for Deprivation of Liberty of the ICRC Protection Division, and the ICRC Central Tracing Agency. He has worked as a Protection Delegate in various contexts, including Afghanistan, Liberia, Zimbabwe, Pakistan, Yemen, Burundi and the Philippines. He has a background in law.

Abstract

Visiting an overcrowded prison is a journey into the private life of each person deprived of his or her freedom, into the community of the detainees and of the staff working in such a place. Using the senses of sight, hearing, smell and touch, combined with empathy and time for observation, helps ICRC delegates to explore vulnerabilities, discover how detainees and staff cope, and grasp the intricate complexity of such a prison system. Beyond what is left of human dignity in these places of detention, when coping mechanisms become survival mechanisms, the suffering shows that overcrowding is wrong. It follows that if overcrowding is “nobody’s fault”, it is the responsibility of every individual and every institution of the criminal justice system to create solutions.

Keywords: detention, overcrowding, conditions of detention, humanity, detention visitation, ICRC, sight, hearing, smell, touch.



I mean to inquire if, in the civil order, there can be any sure and legitimate rule of administration, men being taken as they are and laws as they might be. In this inquiry I shall endeavour always to unite what right sanctions with what is prescribed by interest, in order that justice and utility may in no case be divided.

– Jean-Jacques Rousseau, 1762¹

Introduction

Two hundred, 500, 1,000, 2,000% of occupancy rate² – the reality of an overcrowded prison³ only appears once you have pushed through the doors that lead to the cells, provided one wants to undertake this journey. Beyond the statistical figures, irrespective of the status of the inmates (sentenced or not), and independently of the premises, the common factor between these places of detention is an obvious denial of human dignity. In a 20-square-metre cell, according to commonly accepted recommendations and standards, there should be a maximum of five or six people; in an overcrowded prison there can be forty, fifty, 100 or more in critical situations. At these levels one wonders how life in detention can be endured, if this can still be called life.

In ninety-eight countries, the detention delegates of the International Committee of the Red Cross (ICRC) visit people deprived of their freedom to ensure that they are being treated in a humane way. This includes checking that they are being held in acceptable living conditions, can stay in touch with their families and are being treated in accordance with humanitarian law and other applicable laws. Where necessary, detention delegates dialogue with detaining authorities to end any abuse and help them to improve detainees' living conditions.⁴

This article hopes to convey the insights gained by the author during a ten-year personal journey in detention as a Red Cross delegate.

Sensing life in detention

Following the initial talk with a prison director that always marks the beginning of a visit by the ICRC,⁵ the tour of the premises in an overcrowded place of detention compares to a great leap into an emotionally overwhelming environment. It severely confronts the preconceived notions of what human dignity is and what can be humanly tolerated, or not. Often, it deeply clouds the feelings and

1 Jean-Jacques Rousseau, *The Social Contract or Principles of Political Right*, trans. G. D. H. Cole, J. M. Dent & Sons and E. P. Dutton, London, Toronto and New York, 1782, p. 5.

2 Definition: (number of detainees present at date "t"/ideal capacity) × 100.

3 The term "prison" is used here as a generic term covering a large range of places of detention.

4 For more information, see Alain Aeshlimann, "Protection of Detainees: ICRC Action Behind Bars", *International Review of the Red Cross*, Vol. 87, No. 857, 2005, available at: www.icrc.org/eng/resources/documents/article/review/review-857-p83.htm (all internet references were accessed in October 2017).

5 On the modalities of ICRC visits in places of detention, see *ibid*.

perceptions brought from the outside, where strong community-based solidarities hold sway. Logically, the first reflex of an ICRC delegate visiting such places of detention is not – except in cases where life-saving action is required – to immediately turn toward addressing the causes of the situation. Within the ICRC's only humanitarian role, the visit consists first and foremost in offering time, attention and care, giving free rein to empathy, and exchanging the “small things in dehumanized places” so aptly described by Paul Bouvier.⁶ Initiating a diagnostic to further address the conditions of detention and treatment starts with finding the adequate prism through which the most intimate consequences can be perceived for each individual affected, primarily the detained person, in his/her body and his/her soul. Usually not constrained by time limits during a visit, a possible way to achieve this can be through activating the senses in order to feel and surreptitiously control these deeply moving emotions, and taking the necessary time to grasp the specificities resulting from severe overcrowding.

Sense of hearing

Depending on the architectural layout of the premises, the occupancy of the place and the ongoing activities during the visit (such as family visits, or educational or religious activities often powered by sound systems), the sense of hearing must adapt itself between moments of extreme noise and apathetic silence. The voice is increasingly muted when the body is flagrantly constrained, sometimes in forced positions to accommodate the crowd. A background noise of voices or the ventilation produced by individual or collective fans augmenting air renewal and cooling the place gives a feeling similar to being in a hive.

While it is important to keep the sense of hearing alert to better understand the possible trauma linked to an excessive level of noise, finding the right time and place that can offer a minimum of privacy, allowing the delegate to adopt a tone conducive to starting a group or individual discussion, can often be challenging. The sparing of a few simple words can facilitate active conversation with those for whom daily life is dictated by an acute competition for meagre resources but also for silence, quietness and a moment and space of intimacy. Progressively and patiently, smiles, looks and gestures become the small vectors of trust that square a space for a meaningful humane exchange, suspended in time from the brouhaha – a privileged moment to discuss life behind bars, including the daily routine and the more important events, as both equally form the milestones that maintain a feeling of being. This is so often an opportunity to open a window onto the outside world, where feelings, culture, the state of world affairs and mutual curiosity between two human beings shape the defining moments of work in detention.

6 Paul Bouvier, “Humanitarian Care and Small Things in Dehumanized Places”, *International Review of the Red Cross*, Vol. 94, No. 888, 2012, available at: www.icrc.org/eng/resources/documents/article/review-2012/irrc-888-bouvier.htm.

Delegates listen to inmates, but also – with the same empathy and interest – to staff who, for the most part, are concerned about the situation in their prison, when they are not feeling overwhelmed or traumatized by a situation on which they think they have so little impact, and which challenges their self-esteem and their daily motivation as correctional officers. Beyond a certain level of crisis, prison staff are confronted with a daily powerlessness to abide by the mandate that they swore to uphold, annihilating their last feeling of pride to work as civil servants for already not-well considered correctional institutions.

Sense of sight

During the several days that an ICRC detention visit lasts, living in this exiguous atmosphere gives a unique opportunity to sharpen the sense of sight. After having identified the most suitable locations, with patience and discernment, a period of contemplation allows the delegate to form a sketch of how life is redefining itself within the prison. Indeed, a visual assessment gives access to an inexhaustible source of information on the dynamics, social system and relationships in terms of power struggle, the habits, the constraints and how each of these impact on each of the inmates in the delegate's field of vision: the texture of the detainees' skin, the shape of their bodies, the appearance of their uniforms, their sleeping rhythms, the movements and flows of inmates and staff, those that are well-off and those left apart, the work patterns, the visible enforcement of rules (or their disobedience), the flow of goods and utensils, the looks, the smiles and the tears. Observing the creative and sometimes desperate coping mechanisms of inmates, attempting to understand how balances are maintained, and for whom and why, and how and when they can be disturbed to the benefit of some and to the detriment of others – the list of things happening in front of your eyes is endless. Exploring vulnerabilities progressively enables an ICRC delegate to understand at least the tip of the iceberg, and to be in a position to bring a humble but adapted response or suggest realistic recommendations to the prison authorities. All these insights shape a new world that the delegate is to be part of. For an ICRC delegate, this requires constantly questioning perceptions, challenging understandings and shaking certainties while assuming that nothing can be taken for granted, as every prison is radically different and overcrowding expresses its consequences differently in each case.

Sense of smell

Often, the sense of smell is the first to reveal the striking indicators that a situation is going wrong. Inmates kept in overcrowded conditions emit body heat that, in cases of limited ventilation, will manifest inside the cell. Poor personal hygiene can often be perceived by the sense of smell, indicating reduced availability of water in a cell, a shower regularly inaccessible, a lack of available hygiene products and, overall, a life well below prescribed standards and recommendations. A sewage tank that is full

and never emptied (or is emptying itself into the nearest creek), a broken toilet, or overflowing trash bins often prefigure a malfunctioning system that will require dissecting each of the processes involved to find the possible root causes. Experience shows that these causes are often proportionally correlated with the discrepancies between the ideal capacity and the population that the prison actually hosts.

But the sense of smell can reveal some more positive aspects, showing that despite acute constraints, some form of equilibrium still prevails. For instance, cooking smells will indicate whether the authorities permit raw or cooked food to be procured outside or brought by the visitors to complement the frugal provisions given by the prison. Any person deprived of his/her freedom needs to recreate his/her points of reference and indisputably, in many contexts, a meal as close as possible to one that could be obtained at home diminishes stress and pacifies the mind. Interestingly, various menus prepared in different dorms will provide an indication of the lifestyle of different groups of inmates depending on their origin in the country, their beliefs and, consecutively, their segregation into cramped premises. Maintaining such a small sign of normality is a factor of collective resilience. Particularly in countries where inmates largely self-manage their daily lives and supplies, looking to the food supply chain will often give precious clues as to the formal and informal mechanisms for coping with the overcrowding situation; the type of prison management; the nature of the human relationships within the prison's community, including power structures, interests and interactions; and the osmosis between the inside and outside world.

Sense of touch

Since it is intimately connected to one's self, to both the conscious and unconscious relationship with the external environment and its limits, in addition to other anthropologic and cultural elements, the sense of touch varies with each person. The feelings of heat and cold, humidity and dryness, softness and hardness, wind or pressure, are influential on relationships with others and with surrounding objects. This often sculpts the flows and use of premises in overcrowded prisons.

In an overcrowded prison, when, in a particular location, the sense of well-being is wounded, when pain arises, it is bound to impact the allocation of space and obviously segregates the detained population between those who have the coping mechanisms and power to be somewhere else, and those, often subject to various other vulnerabilities, who do not. For example, the value attributed to a cell or a place that is particularly vulnerable to either strong winter winds or complete lack of ventilation in a tropical climate can be a significant factor of analysis of prison dynamics. It is this sense that often brings a prisoner to his limits and potentially jeopardizes security. What is it like to have to resolve to sleep each night, for years, directly on a cold concrete floor? How does it feel to have so little fresh air to breathe, or space in which to stretch? What is the effect on mental health when it becomes impossible to avoid contact with co-inmates due to lack of space? The forthcoming arrival of a dry or a rainy season or a sudden

change in weather forecast can be perceived with a sense of fear and apprehension since, in prison, it may aggravate the consequences of overcrowding. Invariably, the reality of harsh conditions often lies at the very end of the dormitory, or at the very end of the corridor, where only a few external visitors will agree to go and, in a sense, to experience pain in the same way.

The interpretation of body language, posture, physical contact, and what it means to touch – or sometimes not to touch – someone or something is an immensely rich field of knowledge and vector of communication with detained people and prison staff. In an overcrowded prison, sharing for some time the burden of involuntary and endured restrictions and being perceived as receptive and as caring about local rules invariably opens a door to being accepted. For an ICRC delegate, it implies understanding what is locally accepted and what is not, and requires navigating between what is humanly accepted and what should not be. It compels the delegate to scroll through the scale of human values, one's own and those of others, while trying to neither renounce humanitarian principles nor get used to, out of habit, an unacceptable situation.

Resilience. Patience. Renouncement. Ignorance. Faith. Transfer. Each inmate in an overcrowded prison uses introspection to find ways to cope with the days, months and, in most cases, years of inaction in a personal space reduced to a few square centimetres. Often, coping mechanisms result in the development of an *ad hoc* informal economy that redefines the notion of space, human relationships and authority within the prison's community.

A journey into a prison's community⁷

Facing a situation of acute overcrowding drastically disrupts beliefs, inevitably puts previously acquired knowledge into perspective and compels sharp insights into the cultural specificities of an overcrowded prison. When all standards become meaningless, correctional best practices often become simply impossible to implement. It is essential to observe the positioning of each individual vis-à-vis the community of co-inmates and staff, and to have a sociological analysis of how a micro-society has recreated itself in the context of the prison. Only by doing this can the delegate grasp the reality of inmates' vulnerabilities and do no harm while caring for the existing equilibrium. Adding to a systemic analysis of the root causes of humanitarian consequences related to overcrowding, elements of comparison with similar communities living outside – from which inmates may originate – can help us to better understand and gain a new perspective on this peculiar prison landscape.

In many countries, the standard in prisons is collective dormitories, sometimes with bunk beds and, in congested prisons, often using every little

7 "Community" is understood here as the overall group of people that have access to the jail: inmates, staff, authorized visitors, service providers such as the few local non-governmental organizations, and representatives of religious groups.

available space as a sleeping area. However, the basic need for individual territory – be it the smallest one available – inevitably leads to some forms of creative segregation of the space, from a basic delimitation of a floor space with any possible material (when a mattress is not available) to a makeshift mattress made of used blankets or a mosquito net, or even at times an improvised room built of wood, plastic or sheets of iron. This allows the creation of private spaces that will usually be either single or double occupancy. When the overcrowding increases, such spaces become the privilege of a few inmates aggregating themselves according to various self-determined factors. There can be so many of these spaces that an open area such as a collective dormitory transforms into a labyrinth, with places that the daylight and fresh air never reach. Human creativity has very few limits other than the prison walls. During the daytime, a makeshift space may serve as an office, a private place for a conjugal visit, a shop, or a holy place for prayer. It may also be rented on a long-term basis, with a price that depends on its location, its size, its possible comfort and its ventilation. This is often symptomatic of the outside society, recreating *intra-muros* the *extra-muros* social scale and structures, often meaning that the most wealthy or influential can afford to build, rent or buy a good space, leaving the floor and the common spaces to others. For some, photos of loved ones adorn the walls, while for others, a hanging plastic bag containing their personal effects constitutes the sole expression of privacy. Some have a tiny place to sleep, while others have to either rotate in shifts or resolve to imbricate their bodies in order to optimize the use of floor space.

As explained by Professor Raymond Narag,⁸ who was detained for seven years in Quezon City Jail in the Philippines before being acquitted, an overcrowded prison is an environment in which detainees, prison staff and visitors are navigating between two systems in order to maximize their individual benefits. The first system is composed of the institution's rules and regulations, while the second consists of an unofficial set of rules aimed at regulating and possibly improving daily life. This creates a blurred line between the duality of what is officially allowed and services, goods or favour that can be obtained to ease life with the discreet and complacent support of some of the guards. Facing overcrowding situations, within premises that have become largely unfit for the size of the population they host and with a limited staff far below the intended ratio, human beings are indeed bound to adjust. Another adjustment comes from the *de facto* delegation of certain management functions and prison services such as discipline, sometimes the first level of health care, the daily head count, some cleaning, maintenance and rehabilitation activities, or paralegal work. This is organized either through inmates' own organizational structures such as brotherhoods, gangs, ethnic affiliations or groups from geographic origins, or through prominent inmates like cell or compound leaders, and implemented by

8 Raymund E. Narag, *Freedom and Death Inside the Jail: A Look into the Condition of the Quezon City Jail*, ed. Rod P. Fajardo III, Supreme Court of the Philippines and United Nations Development Program, Manila, 21 January 2005.

trusted inmates. These powers are further delegated through a pyramid of leadership, assignment of tasks and trading of favours. This system requires means, including financial resources and territories, to exert and sustain. Importantly, these adjustments remain crucial for many to benefit from protection and services.

Reviewing the existing literature, holding meetings with key *intra-* and *extra-muros* actors, and patiently acquiring knowledge during prison visits undoubtedly allows ICRC staff to understand these binary systems of detention and to dig into what can and cannot be understood at first sight. From a humanitarian perspective, it is necessary to analyze the impact of overcrowding on the conditions of detention and treatment, as well as to identify possible consequences in terms of vulnerabilities that would not necessarily exist with a lower occupancy rate.

In several correctional systems where inmates' self-management prevails, disciplinary systems are largely administered by inmates themselves, often through a well-elaborated set of rules and functions in lieu of prison staff who, due to their small number, cannot be present at all times to administer a fair and regulated disciplinary regime. Despite all international recommendations, this *de facto* self-administered disciplinary system tends to become the "norm" in the absence of adequate resources and purposeful premises availed to the correctional institutions in line with their actual detained population and necessary to implement an official system. However, on the positive side, groups or sub-groups of the inmate community (gangs, brotherhoods or confessional groups) often substitute various social or maintenance services that are failing to reach inmates. For example, inmate groups may establish their own system of fundraising, fellowship and network of partnerships with civil society – including with outside organizations – that allow their most indigent members and their families to access a range of services within and outside of the prison. This can include paying for health care in external medical facilities when the existing mechanisms available to the detainee are not sufficient. This happens, for instance, when these mechanisms cannot, or are too slow to, be activated by a sole prison nurse who covers hundreds of inmates, or when financially uncovered medical exams are prescribed in the referral health-care facilities. When possible, it is not uncommon to see self-organized education, rehabilitation, sports or creative activities being implemented in a crowded space by an individual or a group of inmates, taught and mentored by others.

Faced with the intricate systems of an overcrowded prison and cautious about the importance of the equilibrium that a non-prejudicial approach requires, the confidential discussion between the ICRC and the detaining authorities concluding a visit can, at times, be rendered complex. An additional fan or electric cooking hotplate greatly improves living conditions, but may overburden weak electrical wiring. Accessing a private hospital to get better health care than in the referral public facility may be more efficient, but it could be against an institutional medical referral policy. Allowing more visitors than is permitted by the prison rules and regulations definitely brings relief to some inmates, but may

create inequality of treatment among them and affect their relationships with the authorities. In these situations, an ICRC delegate is frequently confronted with dilemmas between fairness and ethics, between risk management and the best interests of the detained person, between technical possibilities and systemic complexities, and sometimes even between the limit of what is allowed and the principles of humanity that stand above all. In a situation of severe overcrowding, one cannot limit community interactions to the existing applicable regulatory framework, be it hard or soft law. Social customs, local traditions, informal rules and a set of flexible and culturally sensitive interpretations of those rules by correctional staff serve to (1) create a predictable environment that allows most members of the prison community to comprehend detention more easily, (2) safeguard a precarious balance between security and human dignity, and (3) sustain the resilience of the prisoners concerned, sometimes to amazing limits.

Overcrowding: A complex notion of the modern “economy of punishment”⁹

Once the visit is completed, there comes a second great leap into an overwhelmingly complex and delicate – though fascinating – task: addressing, together with the authorities, both the causes and the consequences of overcrowding. Each context is characterized by its own specificities – including the most identity- and sovereignty-related ones such as the expression of justice and the philosophy of criminal punishment – and there are inevitably compromises to be made and sensitivities to be respected. Balancing these competing factors is even more tenuous in a situation characterized by individual, systemic and societal dimensions. The solely humanitarian nature of the ICRC's action proves to be an interesting ground of acceptance in discussing overcrowding. The ICRC's neutrality, independence and impartiality can facilitate destigmatized, relaxed and technical exchanges with concerned practitioners in the penal chain.

It may be a truism, but behind the very notion of overcrowding, behind the institutions that share liability and accountability, there are human beings. Indeed, beyond the detained person and the correctional officer, who bear most of the consequences of overcrowding, police and investigative officers, judges, court staff, defence lawyers and public prosecutors, probation and parole officers, local authorities or even someone as remote as a prisoner's neighbour or other witness are among the actors in stories of overcrowding. And these stories, unfortunately, are rarely among those with happy endings. Instead, they most commonly carry the stigma of human suffering and scars. Any analysis of the genesis, the burden and the possible measures of mitigation, levers or solutions to overcrowding compels us to include all women and men who, along the penal chain, live its daily reality. Their history, their personalities, their professional practices and

9 Translation of “l'économie du châtement”, from Michel Foucaud, *Surveiller et punir*, Gallimard, Paris, 1975.

capacities, their interactions and their status can be influential to the causes of overcrowding and can also be the small but essential elements that make a difference in finding remedies and ways forward. Exploring together the reality of individual day-to-day practices in the perspective of building an understanding of the larger picture allows a sharper contextualized approach and ownership of local actors.

When dealing with multilayered problems, linear thinking is bound to fail as there is no simplistic analysis or obvious solution. With a prison universe that systematically and immediately adapts itself and recalibrates its inner balances when one of its components or processes is altered, both systemic and creative thinking can offer interesting angles for approaching sustainable solutions. In an overcrowded prison, efforts to address a particular consequence have a high risk of reduced impact if the planning does not integrate other prison processes, subsystems and functions that have also become dysfunctional or are otherwise affected by the disruptive effect of overcrowding on prison systems. Indeed, in addition to the rapid deterioration of detention facilities, often with little budget elasticity to immediately adjust capacities, the daily human costs of overcrowding are mainly suffered by inmates and prison staff. Access to services is often constrained by many elements that need to be factored in to satisfy an evidence-based diagnostic and a results-based set of objectives. Therefore, fixing some of the consequences of overcrowding requires a full-fledged participatory and systemic approach to mitigate constraints and manage assumptions. Correctional best practices, among other norms, dictate that a diversified set of expertise should be articulated together. During its visits and implementation of projects, the ICRC is increasingly required to master unconventional and rather technical and multidisciplinary fields of expertise in correctional matters and prison management while, in certain extreme situations, still having to resort to an empirical approach. Improving access to sunlight by simply building or extending a dedicated recreational area may fail if the prison staff are already overwhelmed in coping with a daily schedule filled with mandatory activities for a population size much higher than they are meant to supervise. Treating some of the health consequences of overcrowding, such as tuberculosis, may be limited to short-term responsive actions if the components of a basic health-care system in detention are not prioritized, meticulously connected with other (sub)-systems either at the prison or at the correctional system level, and driven by the duty of care. Managing inmates' judicial data to foster a swift application of modes of early release to reduce congestion goes beyond the availability of software and requires that attention be paid to each and every processes of a complex information management system.

Finally, in various countries where the ICRC works, but certainly not only in those, one can contemplate the worsening trends and wonder with great lucidity what solutions to overcrowding are to be implemented. Beyond individuals and correctional systems, we now see the complex notion of a modern "economy of punishment"¹⁰ with deep ramifications throughout society, impacting a large

10 See above note 9.

spectrum of institutions and patterned after convoluted systemic schemes. For instance, increases in pre-trial overcrowding – one of the leading prison trends currently observed worldwide¹¹ – are often symptomatic of unbalanced flows of inmates and shortcomings that affect one or more of the following: (1) inflow (arrests by law enforcement agencies, the use of incarceration and the lack of alternative dispute resolution mechanisms), (2) outflow (fast disposal of cases by judicial actors, the procedural rules of courts, the (harsh) interpretation of criminal laws), (3) the lack of meaningful and sizeable alternatives to detention and probation systems, and (4) in last resort, insufficient prison capacity to abide by penal philosophy and practices or societal trends.

It is essentially at the societal level that it should emerge that overcrowding is wrong and certainly not inevitable. This, in turn, should result in community engagement and a set of policies and strategies energized with long-term political and financial commitments. Addressing consequences solely at the prison level is bound to fail if sustained and rooted trends continuously fuel the inflow of inmates, or if cases are not disposed faster, irrespective of their outcome. Therefore, the prerequisite of any action is to scrupulously define the scope of the problem and its constitutive parts in the penal chain, but also in the society as a whole. Succeeding in reducing the causes of overcrowding starts by collectively acknowledging the problem and by strategizing the optimal short-, middle- and long-term answers between the pillars of the judicial system and beyond, to secure the support of society. By nature, correctional science covers a very large spectrum of disciplines, and so too should the endeavour to address both the causes and consequences of overcrowding. Undoubtedly, this can only happen when there is a momentum of two important factors through which can be developed the best coordinated expressions of governance: on the one hand, a critical mass of both small and large initiatives coordinated together, and on the other, action at the local level, voluntarily and efficiently coordinated and evaluated to have a long-lasting impact.

Final remarks

There is a plethora of literature on the bookshelves related to addressing overcrowding. Numerous countries have produced a wide range of policies, pilot projects, good practices and rules of governance that attempt to tackle this growing problem. Along the penal chain in many countries, there are numerous projects, pilot projects, fora and initiatives, an exhaustive list of which would be too long to provide here. There is no lack of creative thinking or champions for this cause. The statement that the problem “cannot be addressed only at the level of prisons but requires a holistic and coordinated response from a broad range of authorities, including at the policy level and in society at large”,¹² seems to

11 Penal Reform International, *Global Prison Trends 2016*, London, 2016.

12 Yves Daccord, in United Nations Office on Drugs and Crime (UNODC) and ICRC, *Handbook on Strategies to Reduce Overcrowding in Prisons*, UNODC Criminal Justice Handbook Series, Vienna, 2013, p. iv.

compel an assessment of what is currently being done. Looking at numerous countries' figures, the trends and the daily reality of detained persons deprived of human dignity in overcrowded prisons, the legitimate and obvious question remains: is there anything missing, and if so, what is it?

In an interview with the Swiss daily newspaper *Le Temps* on 17 August 2012, Robert Badinter, former French minister of justice, explained:

In the course of my studies, I understood that there is an Iron Law that governs the condition of detainees: you cannot, in a democracy, make the condition of detainees progress faster than that of the most underprivileged worker outside detention. Public opinion cannot stand it. For public opinion, it is inconceivable that those in prison who have, it believes, committed an offense, can live better than the proletarian worker who wakes up in the morning to go to work in the factory. Therefore, you cannot make the conditions of incarceration progress if the society as a whole does not progress at the same time, and I would say faster.¹³

Today, however, it remains the case that in severely overcrowded prisons, beyond being an incredibly rich moment of humanity and field of work for ICRC staff, the gap in the duty of care for human beings inevitably widens and triggers a sense of helplessness and powerlessness. As in many countries, the situation inside worsens inexorably even as outside economies grow year after year.

Ensuring respect for the life and dignity of persons deprived of their liberty: ICRC detention activities

Since 1870, the ICRC has endeavoured to improve the humanitarian situation of people deprived of their liberty.

The ICRC is well known for its work on behalf of people held in connection with international and non-international armed conflicts and other situations of violence. In other circumstances too, the ICRC takes action whenever it can to improve the treatment and conditions of people deprived of their liberty.

The ICRC aims to secure humane treatment and conditions of detention for all those deprived of their liberty, regardless of the reasons for their arrest and detention. It also seeks to alleviate the suffering of their families, particularly by restoring communication between detainees and their relatives.

The ICRC endeavours, as a priority, to prevent torture and other forms of ill-treatment, to prevent and resolve disappearances, to improve conditions of detention (for example access to food, water and health services), to restore and maintain family contacts, and to ensure respect for legal safeguards. In some cases, the ICRC also supports former detainees, facilitating their return to society.

13 Author's translation. See "Robert Badinter: 'Justice, que d'injustices commises en ton nom!'", *Le Temps*, 17 August 2012, available at: www.letemps.ch/culture/2012/08/17/robert-badinter-justice-injustices-commises-nom.

The ICRC's detention-related work is based upon a comprehensive assessment of the situation both inside and outside places of detention. This assessment is facilitated by constructive dialogue with the detaining authorities and visits to detainees, which are subject to five basic conditions.

The ICRC must be given: 1) access to all detainees within its field of interest; 2) access to all premises and facilities used by and for the detainees; 3) authorization to repeat visits; 4) the possibility to speak freely and in private with the detainees of its choice; and 5) assurance that the authorities will provide the ICRC with a list of all detainees within its field of interest or authorize it to compile such a list.

A subsequent analysis of the information gathered enables the ICRC to identify the key risks faced by the detainees and other factors influencing their situation, including the challenges that confront the detaining authorities in attempting to address humanitarian concerns.

In all situations, the ICRC works with the detaining authorities and expects them to take the necessary steps to ensure humane treatment and conditions of detention. To that end, it undertakes confidential, bilateral dialogue with them concerning its findings, relevant national and international standards, and the action and resources required to improve the situation of persons deprived of their liberty.

On the basis of its assessment and analysis of each situation, the ICRC develops a specific strategy to meet the needs of the detainees most effectively. The strategy may include ICRC action regarding individual detainees, structures, institutions and regulatory frameworks, as well as various material or technical interventions to help meet humanitarian needs. Throughout its implementation, the ICRC monitors and amends the strategy to ensure that its actions have a tangible impact on the situation of detainees.

