

FORMUNV

The Abuse of Human Rights in Prisons.

UNHRC

Topic Area A:

### Introduction to the Topic Area

The United Nations Declaration of Human Rights states that every citizen deserves an equal right of access to opportunities, a life of dignity, freedom of thought and liberty. No discrimination should thus be made on grounds of sex, religion, race etc. The rights entrenched in this charter are further extended to prisoners as being citizens of their nation, there is no reason why an exception be made when granting them the basic human rights.

A prisoner is a citizen who is deprived of his liberty by being kept in custody, or forcible restraint as a result of him breaking the law. Prisoners can broadly be categorized into three categories; civil prisoners, prisoners captured during the war and political prisoners captured due to performance of illegal activities in the political sphere. In accordance with the “Basic Principles for the Treatment of Prisoners”, adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, All prisoners shall be treated with the respect due to their inherent dignity and be valued as human beings.

Despite having ratified the aforementioned resolution, prisons in many countries around the world have been reported for ill treatment of their prisoners. The use of torture and other malicious practices, even if the need for it arises, to extract important information, remains questionable and in many cases torture just seems like a good enough way to “get back” at a person for his crimes and this is especially true in the case of political prisoners. Many detainees are subjected to methods of interrogation which amount to ill treatment, including, but

not limited to, painful shackling, sleep deprivation; exposure to loud music or screaming noises; beating, slapping and kicking; shaking; threats of physical and sexual violence; insults; forced squatting for long periods. Other abusive methods applied during interrogation periods, include: exposure to extreme temperatures alternately; prolonged or continuous exposure to bright spotlights; denial of timely and adequate medical care; tear gas and sound bombs as well as detention in inhuman and degrading conditions.

In addition to this degrading treatment, many prisoners are deprived of their right to meet their families and in inappropriate manner of physical searched conducted, especially on the women, has also been reported in various prisons. Furthermore, with regards to the mentally ill prisoners, various governments have been condemned for the misuse of solitary confinement for these mentally challenged inmates. An example of this is seen in the Pennsylvanian Prison to where these most vulnerable members of the society are victimized by being kept in isolation cells for prolonged periods.

Cultural perceptions in various countries have further fuelled this degrading treatment of prisoners as perceptions form that these people deserve to be treated as less than humans because of the crimes they have committed. This perception works to their detriment as they have a hard time reintegrating into the society after their release and are likely to be shunned by their family and friends as well. Consequently, this exacerbates crime in general, as these individuals are likely to join gangs or intentionally commit crimes to return to prisons after being unsuccessful in the outside world.

Another area of state responsibility

towards the status of prisoners is the treatment of foreign prisoners. Being imprisoned abroad adds to the psychological stress of the prisoners especially the citizens of a first world state who are locked up in prison cells of a third world country. Appalling living conditions, language barriers and unfamiliarity with the legal code of the country only add to the distress of these foreign prisoners. The recent arrest and strip search of the Indian Consular official, Devyani Khobragade, brought into spotlight the legal status of the diplomatic officials and the special privileges accorded to them.

An important aspect of rights of prisoners that receives popular attention is the prisoners of conscience i.e. the people who have been arrested on grounds of their race, religion, or the nonviolent expression of their conscientiously held beliefs. Amnesty International holds an important place in this regard as its successful campaigning has been able to attract a lot of attention of the global arena. Another important area of human rights of prisoners is with regards to the health standards and the hygiene level of the prisons as safe places for the prisoners. In the year 1990, the United Nations Basic Principle for the Treatment of Prisoners declared “prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.” However, violations of this standard have taken place in various countries, a popular example is that of the Guantanamo Bay Prison Camp and such factors make it necessary for the World Health Organization to intervene as well. It has been reported that the doctors shared the confidential medical records with the interrogators and never stated a limit of interrogation techniques based on the prisoner’s health status. Prisoners have also stated that the amount of health care that they will

receive depends on their cooperation in the interrogation room. The military has also been caught withholding necessary medical care, which resulted in further damage to the prisoner's health. And, prisoners have stated that doctors have furthered their pain and suffering by performing unnecessary procedures.

Consequently, it is the responsibility of the official staff of the prisons to assure that the human rights of the prisoners are upheld at all times and the prisons serve as safe places for these individuals, as despite the crimes that they have committed, they still hold the status of human beings and hence deserve to be treated rightfully with dignity and respect.

widespread manner and with prisoners being frequently used as slave labor, massive human right violations were committed. The perpetration of violence against prisoners often took the form of widespread ruthless killing and murders, sometimes even amounting to mass genocide, as was the case of the Nazis in Germany.

This abuse of rights of prisoners caught attention of the international community and developed a need to come up with uniform guidelines for the treatment of prisoners for the decades that followed. Consequently various treaties were drawn up as well as many international instruments that aimed to lay down a uniform code for the wellbeing of prisoners through ensuring that their human rights were upheld.

#### Geneva Conventions 1949

The Geneva conventions and their additional protocols are at the core of international humanitarian law and primarily deal with the regulation of conduct of the armed conflicts and aim to cease there after effects. The 3rd Geneva Convention applies to the prisoners of wars and it officially replaced the Prisoners of war Resolution of 1929 and it builds upon the provisions of Hague Conventions of 1899 to 1907 that covered the conduct of war. It contains 143 articles as opposed to the 73 articles of the earlier resolution.

The provision to protect prisoners of war recognizes that while nations are quite capable of committing gross abuses of human rights in peacetime, wartime creates an especially fertile ground for horrendous attacks on individuals. The hatred, tension, and upheaval inherent in armed conflicts, particularly civil wars, has led to the murder or ill treatment of prisoners of war. The Convention establishes the principle that prisoners of war shall be released and repatriated without delay after the cessation of active

#### History of the Topic

The issue of abuse of human rights of prisoners was largely a domestic affair, which was dealt with by the countries individual government officials in light of their constitutions. However this was the case only till the advent of the two World Wars. During these wars, civil liberties and freedoms were denied on a

hostilities.

This convention applies to all international armed conflicts, regardless of any formal state of war; by providing basic principles for non-international armed conflict. Furthermore, the convention elaborates upon a list of grave breaches for which countries are obligated to enact penal legislation and prosecute or extradite individual offenders. These grave breaches include willful killing, torture or inhumane treatment, deliberately causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile power, intentionally depriving a prisoner of war of the rights of a fair and regular trial, and unlawful deportation of a protected person. Specifically, it required POWs to give only their name, rank, and serial number to their captors. Nations party to the Convention may not use torture to extract information from POWs.

### **The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**

This treaty was ratified in 1994 and deals primarily with racism and racial discrimination. It sets certain standards for governments at the national, state, and local level to address racial discrimination in a wide range of areas. Advocates can use the ICERD to establish human rights standards for addressing racism and racial discrimination at the local level. Issues like police brutality, access to services, prison conditions and even death penalty issues that often have disparate racial impact can be framed and

concretely addressed using ICERD as a tool.

ICERD offers a lot of possibilities when it comes to offering public services. Prisons are seen as public entities and thus should not discriminate when it comes to provision of medical services, adequate nutrition and safety.

### **Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1976**

The twentieth century ushered in an age where technological advancement and political progress was at its peak.

However, this optimistic environment was darkened by the growing militaristic ideas. The practice of coerced interrogation dates back to the Stalinist era. Abusive tactics and torture was institutionalized. The livelihood of those who conducted these interrogations depended upon their ability to extract information. The torture practiced in the Soviet Union

was in no comparison to the vicious treatment given by the Nazi Regime in Germany. They began a series of unprecedented gruesome medical experiments on the prisoners captured. As a result various victims died or suffered inhumane, degrading treatment many victims were forced to remain in tanks of cold water or remain naked while freezing to death.

Although torture was not unknown in previous centuries it was the Nazi atrocities that gained attention of the international community to this matter. Consequently, this convention was drawn up by the General assembly so as to create uniform rules and regulations for taking charge against those who used torture to extract out information from prisoners.

This declaration is divided into three parts. The first part defines torture

(Article 1) and commits states to take effective action to ensure that torture in any form is excluded from the practices of their territory by recognizing it as a criminal offence. Part two of the declaration deals with the governing and application of the convention by making sure that countries remain actively seized on this matter. The last part of the convention is concerned with amendment of the convention. It also includes an optional arbitration mechanism for disputes between parties (Article 30).

**Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1982**

These principles were adopted by the GA on 18 December 1982. With regards to this, those physicians or medical practitioners entitled with the duty to provide medical assistance to the prisoners are obligated to provide the same quality and standard of care as is afforded by those who are not imprisoned. Moreover, any attempt to commit torture or other cruel treatment is an offence under international law. The principles also elaborate that it is a contravention of medical ethics for health personnel to participate in procedures that restrain a prisoner or detainee unless it is deemed necessary for the protection or safety of the prisoner himself or those around him.

**Basic Principles for the Treatment of Prisoners 1990**

The Standard Minimum Rules for the Treatment of Prisoners were the outcome of a long development process which started in 1926 with the work of the International Penitentiary Commission (later the International Penal and Penitentiary Commission or IPPC) and continued with a revision in 1933, the IPPC 3 put forward a revised draft of the Rules, which were finally adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955.

Despite the fact that they were not legally binding, the Rules soon were acknowledged as the criteria against which other standards for the treatment of prisoners were to be measured. For over 60 years they have stood the test of time remarkably well.

These were adopted by the General Assembly in its resolution 45/111 of 14 December 1990. They articulated the underlying basis for the Rules with a view to facilitating the full implementation of the Rules.

However, changes and developments in the use of imprisonment techniques have been drastic since 1990. The nature and use of imprisonment has changed dramatically in a number of respects in many countries over the last sixty years. In the first place, there has been a significant increase in the total number of persons being held in prison. It is now reliably estimated that there are over ten million prisoners in the world and prison populations are growing in all five continents.

This increase has had several consequences. In many jurisdictions prison capacity has not kept pace with the increase in prisoners. This has led to gross overcrowding, with a resultant deterioration in conditions for many prisoners, including inadequate living

accommodation, shortage of medical facilities and limited access to opportunities for education, skills training and work. In many countries there are prisons which are centuries old and which have not been properly maintained.

In many countries the number of young persons and juveniles, as well as of women in prison has increased disproportionately. At the same time, the majority of prisoners are still adult males, a fact that continues to influence the manner in which prisons are constructed and managed. In 1957 the Rules were adopted with male adult prisoners in mind, with little thought given to the different needs of young persons, women and other vulnerable groups in prison settings.

The health profile of prisoners, which has always been generally poor, has become a more acute problem over the last 60 years, with the prevalence in prisons of infectious diseases, of prisoners who are addicted to drugs or other substances, or who have mental illnesses.

Furthermore, owing to globalization, the proportion of prisoners who are not nationals of the country in which they are imprisoned, has increased. In some countries, over half of all prisoners fall into this category.

Delays in the judicial process, including difficulties in having access to legal aid, have resulted in an increasing proportion of prisoners who are awaiting trial. In some jurisdictions this is as high as seventy or eighty per cent.

Consequently, in year 2013, the UN General Assembly formulated once again, a revised draft of the standard rules for treatment of prisoners which was adopted internationally in A/RES/68/190.

### Important Issues Surrounding the Topic

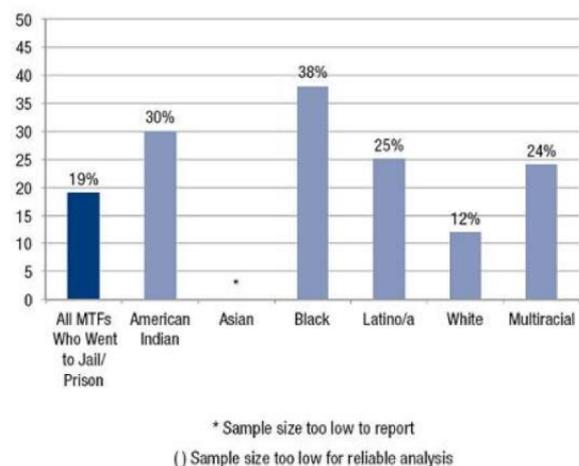
According to a Human Rights Watch report, “Prisoners and detainees in many

local, state and federal facilities, including those run by private contractors, confront conditions that are abusive, degrading and dangerous. Soaring prison populations due to harsh sentencing laws—which legislators have been reluctant to change—and immigrant detention policies coupled with tight budgets have left governments unwilling to make the investments in staff and resources necessary to ensure safe and humane conditions of confinement. Such failures violate the human rights of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person, and to be free from cruel, inhuman or degrading treatment or punishment.”<sup>1</sup>

Despite several laws that have been placed regarding the rights of humans in prisoners, over the years prisoners have been subjected to much abuse and violence. This abuse has been justified as a means of ‘extracting information’ or merely as a circumstantial necessity. Caretakers of such prisoners and the society in general have labeled prisoners to be ‘deserving’ of the torture and punishment of such abuse. Abuse falling into this category includes the following.

### Sexual Abuse

Sexual Assault in Jail/Prison for Transgender Women by Race



Prison rape is one of the most unethical and high reported human rights

violation. It refers to refer to rape of inmates by other inmates or the rape of inmates by staff. A review of the official data on the extent of the prison violence problems in the United States (murder, rape, assault) suggests that the most serious forms of violence are rare in federal and state prisons and that the rate of violence in federal and state prisons is actually slightly on the decline, despite the doubling of our prison population in the last decade. However, an examination of these same official data focusing on the number (rather than the rate) of violent victimizations suggests that an examination of changes in rates of violence only tells “part” of the official story. For example, examination of data from the 2000 Census of State and Federal Correctional Facilities revealed that “the number of assaults, including both physical and sexual assaults, was 32% higher [in 2000] than in a similar period preceding the 1995 census” (Stephan and Karberg, 2003: VI). In 2000, there were 34,000 inmate on inmate assaults reported. This increase in the volume of assaults has implications not only for traditional prison control strategies (i.e., the need to identify and sanction offenders using segregation and transfer, and to protect victims using protective custody, will strain existing resources even further) but also for the community control of a growing number of returning offenders, who experience violence directly (as offenders and/or victims) in prison, upon release from prison.

### Women physical abuse



Sexual abuse by guards in women’s prisons is so notorious and widespread that it has been characterized as “an institutionalized component of punishment behind prison walls.”<sup>3</sup> What is unfortunate is that if a co-worked sexually assaulted a woman on the job, he would be fired. In prisoners, these ‘caretakers’ believe in taking the punishment and reformation into their own hands. The power dynamics in prison severely disadvantage the prisoner, who is at the absolute mercy of her guards and correctional officers, relying on them for necessities such as food and for the small privileges and luxuries such as cigarettes. Guards have unlimited access to prisoners and their living environment, including where they sleep and where they bathe. With such an imbalance of power, the likelihood of sexual assault increases. Sexual abuse in prison can range from forcible rape to the trading of sex for certain privileges. While the latter may seem consensual to some, the drastic



power disparity makes the idea of "consent" almost laughable.

"It's *always* unacceptable and illegal," says Lovisa Stannow, executive director of Stop Prisoner Rape. 3 Angela Davis, *Public Imprisonment and Private Violence: Reflections on the Hidden Punishment of Women*, 24 *New Eng. J. on Crim. & Civ. Con<sup>a</sup>nement* 339, 350 (1998).

While guard-on-prisoner sexual assault is common, putting a number on the instances is difficult because so many assaults are unreported. As with sexual assault on the outside, many survivors in prison are ashamed and embarrassed to come forward, fear that their claim will be hard to prove or fear that their attackers will retaliate. In prison the fear of retaliation is heightened, as the prisoner continues to live with her attacker controlling her daily life. And inmates who report a sexual assault are frequently put in segregated isolation, ostensibly to protect them from retaliation, but this isolation can be emotionally and physically draining, and well, terribly isolating.

"I want to have control over my own body and my life, just as you do. I want to choose the people with whom I get intimate, just as you do. I absolutely did not want to have sex with that man in the San Francisco jail, but I felt powerless to refuse him. As a transgender woman, I have experienced the worst kind of treatment our society has to offer."

- Cecelia, California

### **LGBT's physical and sexual abuse**

As per the Human Rights watch Report published in 2001, certain prisoners are targeted for sexual assault the moment they enter a penal facility: their age, looks, sexual orientation, and other characteristics mark them as candidates

for abuse. A clear example is that of Dee Farmer, a young preoperative transsexual with "overtly feminine characteristics" who was placed in regular housing in a maximum-security federal prison. Brutally raped within two weeks of arriving, Farmer sued in federal court--later bringing the case all the way up to the U.S. Supreme Court--arguing that as a transsexual she was extremely likely to face sexual assault in prison. But a prisoner does not have to look like a woman to be vulnerable to such abuse. Rather, a broad range of factors are correlated with increased vulnerability to rape, some related to perceived femininity, some entirely unrelated. Specifically, prisoners fitting any part of the following description are more likely to be targeted: young, small in size, physically weak, white, gay, first offender, possessing "feminine" characteristics such as long hair or a high voice; being unassertive, unaggressive, shy, intellectual, not street-smart, or "passive"; or having been convicted of a sexual offense against a minor. Prisoners with any one of these characteristics typically face an increased risk of sexual abuse, while prisoners with several overlapping characteristics are much more likely than other prisoners to be targeted for abuse.<sup>5</sup> According to Just Detention International, LGBT inmates are "among the most vulnerable in the prison population." 67% of LGBT prisoners in California report being assaulted while in prison.

### **Death Penalty**

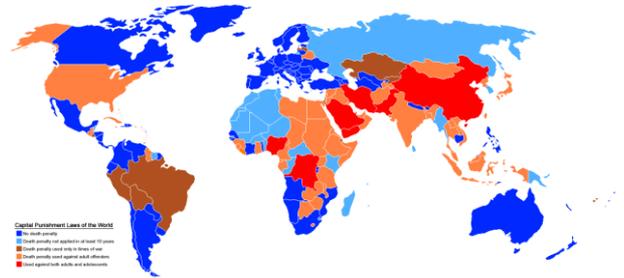
Article 3 of the UN Universal Declaration of Human Rights states that "Everyone has the right to life, liberty and security of person". According to Article 6 of the International Covenant on Civil and Political Rights, the right to life is to be protected by law. The same Article prohibits states from arbitrarily

depriving persons of their lives. Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms contains similar provisions on the right to life. The death penalty or capital punishment as it is otherwise known continues to be legitimate and practiced in a number of states around the world. The most populous country in the world, China, executes thousands of people every year, and the most powerful country, the United States, uses it regularly. Eightyfour countries retain the use of capital punishment. However, the number of countries employing the death penalty is declining and it is possible that worldwide opinion and pressure will gradually influence all countries to abandon this practice. Some states in the U.S. have outlawed the death penalty except for most extreme cases e.g. crimes committed during war. Other states while they may not have outlawed the death penalty, are in practice abolitionist by not actually sentencing offenders to death. Some of the earliest human rights activism, for example, by Amnesty International concerned protecting political prisoners from being sentenced to death for their political beliefs. The relevant standards are Article 3 of the UN Universal Declaration of Human Rights on the right to life and Article 6 of the International Covenant on Civil and Political Rights, also this on the right to life. The UN Economic and Social Council (ECOSOC) has adopted safeguards guaranteeing protection of the rights of those facing the death penalty. The death penalty might appear to constitute a violation of the right to life but human rights law falls short of insisting that it does. It leaves states the option to impose the death penalty but urges them to move towards abolition and also imposes certain limits on the way in which the death penalty can be imposed. Capital punishment:

May only be imposed for the most

serious crimes, pursuant to a final judgement rendered by a court and providing it is not contrary to the provisions of human rights law e.g. not a crime of genocide.

Anyone sentenced to death has the right to seek pardon or commutation of the sentence;



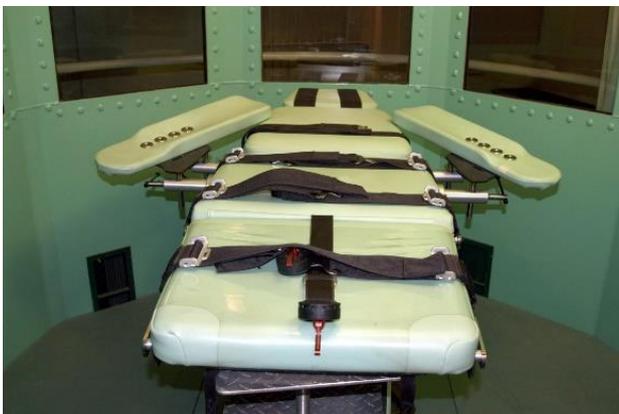
Death sentence is not to be imposed on anyone below the age of 18 or carried out on pregnant women.

Even for states which have agreed to abolish the death penalty, human rights law appears ambiguous, allowing them in some statutes to make reservations maintaining the right to use the death penalty at times of war for example. At the same time, the use of the death penalty is totally prohibited from use by the various international criminal courts, like the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court.<sup>7</sup>

Sweden has long worked actively at international level for the total abolition of the death penalty. In Sweden's view, the death penalty is an inhuman, cruel and irreversible punishment that has no place in a modern legal system, and its abolition is a prioritised task for the Government in efforts to promote and increase respect for human rights. Sweden is working actively to persuade states that still include the death penalty as part of their legislation to change their attitude. This work is conducted both within different multilateral fora – primarily in the UN, but also in the Council of Europe, within the

Organisation for Security and Cooperation in Europe (OSCE) and in bilateral contacts. Much of the work today is coordinated within the EU in accordance with the EU Guidelines against the death penalty vis-à-vis third countries which was adopted by the EU General Affairs Council in June 1998. The General Affairs Council has also adopted provisions on trading in goods that can be used to carry out capital punishment, torture or other cruel or inhuman treatment or punishment.

### Death Row Conditions



Death row conditions in many countries fall far short of international norms prohibiting cruel, inhuman or degrading treatment or punishment. Conditions range widely, from the sterile, solitary confinement that pervades death row in many states in the United States, to the unsanitary and overcrowded prisons in some parts of the Caribbean and Sub-Saharan Africa. Solitary confinement leads many prisoners to develop debilitating mental illnesses, and overcrowding, combined with poor nutrition and hygiene, threatens their health and in some cases can lead to premature death. Harsh and life threatening, abysmal, dangerous, and degrading are just some of the ways in which prison conditions have been described in retentionist countries around the world. The most commonly cited problem is overcrowding. In most countries (including Bangladesh, Benin, Ghana, Guatemala, Jamaica, Lebanon,

Morocco, Nigeria, South Sudan, Tanzania, Trinidad and Tobago, Tunisia, Uganda, United States of America, and Zambia), overcrowding is a major issue in prisons housing death row inmates. Prison Services officials reported that in one prison in Ghana 104 death row inmates were held in a cell designed to hold only 24 inmates. In Nigeria, a cellblock built to house 6 inmates has been used to hold as many as 18-24 death row inmates. In Zambia's Mukobeko Prison, which was built to house 400 inmates, there were 1,678 prisoners in 2007, 296 of whom were on death row. Overcrowding is so severe in Eritrea's prisons that some prisoners are reportedly held in shipping containers, underground bunkers, and other similar places with limited light or ventilation. In Bangladesh, prisoners must sleep in shifts due to the severity of overcrowding. Moreover, reports indicate that prisons are at 135.7% capacity in India, at 600% capacity in Congo, and at 200% capacity in Madagascar (based on a 2005 report). Overcrowding in Congolese prisons (in both the Democratic Republic of Congo and the Republic of Congo) has led to a high number of custodial deaths. While the governments of Lesotho and Russia have made efforts to alleviate overcrowding by building more prisons, granting pardons and promoting alternative punishment for lesser crimes, efforts to reduce overcrowding in countries such as Madagascar have been impeded by the lack of financial resources.

### Pre-trial detention

Pre-trial detention is overused in most countries worldwide and in many developing countries the size of the pretrial prisoner population is larger than that of the convicted prisoner population. This situation contradicts the provisions in international standards, including ICCPR, that provide for the

limited use of pre-trial detention, only when certain conditions are present. Recognizing the particular vulnerability of pre-trial detainees, international human rights instruments provide for a large number of very specific safeguards to ensure that the rights of detainees are not abused, that they are not ill-treated and their access to justice not hindered. although pre-trial detainees should be presumed innocent until found guilty by a court of law, and treated as such, conditions in pre-trial detention are often much worse than those of prisons for convicted prisoners. In addition, the lack of resources for prisons in many low-income countries means that people in detention do not have access to legal advice and assistance, with the result being that they may overstay on remand, and/or not receive a fair trial, further adding to the congestion of prisons. Therefore, improving access to justice, supporting legal and paralegal aid programmes, improving information management and cooperation between courts and prisons, to speed up the processing of cases, as well as assisting with the development of safeguards for pre-trial detainees, such as independent monitoring and inspection mechanisms, comprise important elements of UNODC's work in the field of penal reform. In Benin's Akpro-Misséréte prison, where death row inmates are held, the high number of pre-trial detainees contributes significantly to overcrowding and many of these pre-trial detainees must endure the same degrading conditions as convicted prisoners. Similarly, in Chad, Democratic Republic of Congo, Dominica, Equatorial Guinea, Liberia, Maldives, Sri Lanka, and Yemen, pre-trial detainees are held with convicted prisoners, worsening the already pressing problem of overcrowding. This issue also affects the prison systems in Cameroon, Republic of Guinea, Liberia, Madagascar, Sri Lanka, and Tanzania.

### Prison management



In many countries the prison department is under the authority of police or military institutions and managers and staff have received no specific training regarding prison management. Staff morale is usually low and effective leadership to drive prison reform is lacking. Information collection and management systems are also very inadequate (or non-existent) in many prison systems worldwide, hindering the development of sound policies and strategies based on reliable, factual data. UNODC provides much assistance in reforming national legislation, developing training programmes for prison managers to improve their leadership role and staff to apply international standards and norms in their daily practice, and by contributing to the institutional capacity building of prison administrations.

### Alternative measures and sanctions

Overcrowding is a key concern in almost all prison systems worldwide, while punitive criminal policies, as well as a shortage of social protection services in the community, continue to contribute to the rapid growth of the prison population in many countries. As mentioned earlier, overcrowding is the root cause of many human rights violations in prisons. Solutions to overcrowding need to be explored and

implemented in almost all countries in which UNODC is operational.



While overcrowding can be temporarily decreased by building new prisons, practice shows that trying to overcome the harmful effects of prison overcrowding through the construction of new prisons does not provide a sustainable solution. In addition, building new prisons and maintaining them is expensive, putting pressure on valuable resources. Instead, numerous international instruments recommend a rationalization in sentencing policy, including the wider use of alternatives to prison, aiming to reduce the number of people being isolated from society for long periods. The use of non-custodial sanctions and measures also reflects a fundamental change in the approach to crime, offenders and their place in society, changing the focus of penitentiary measures from punishment and isolation, to restorative justice and reintegration. When accompanied by adequate support for offenders, it assists some of the most vulnerable members of society to lead a life without having to relapse back into criminal behavior patterns. Thus, the implementation of penal sanctions within the community, rather than through a process of isolation from it, offers in the long term better protection for society. Supporting the introduction and implementation of noncustodial sanctions and measures is therefore a key element of UNODC's

work in the area of prison reform.

### Social reintegration

One of the principle objectives of the United Nations in the area of prison reform is to contribute to the successful reintegration of prisoners into society following their release. Social reintegration initiatives should start as early as possible within the criminal justice process in order to have maximum effect. This means that diversion from the criminal justice process (especially of vulnerable groups) to appropriate treatment programmes, non-custodial sanctions, instead of isolation from society and purposeful activities and programmes in prisons, can all be considered as elements of a comprehensive "social reintegration" policy. Interventions to support former prisoners following release from prison, continuum of care in the community for those in need, will all be more effective if the period in prison is used to prepare a prisoner for re-entry to society. This policy requires close coordination between criminal justice institutions and social protection and health services in the community and probation services where they exist. UNODC can offer key support and advice in this area, including supporting the development of social reintegration programmes in prisons and in assisting with the planning and implementation of continuum of care and support in the community.

### Healthcare



Equivalence of healthcare and the right

to health is a principle that applies to all prisoners, who are entitled to receive the same quality of medical care that is available in the community. However, this right is rarely realised in prisons, where usually healthcare services are extremely inadequate. Prison health services are almost always severely under-funded and understaffed and sometimes non-existent. Most of the time under the responsibility of the authority in charge of the prisons administration, prison health services work in complete isolation from national health authorities, including national HIV and national TB programmes. Specific women's health needs are rarely addressed.

The right to health includes not only the access to preventive, curative, reproductive, palliative and supportive health care but also the access to the underlying determinants of health, which include: safe drinking water and adequate sanitation; safe food; adequate nutrition and housing; safe health and dental services; healthy working and environmental conditions; health-related education and information and gender equality.

### Case Studies

#### Abuse of Human Rights in Guantanamo Bay Prison

##### History of the Problem

In January 2002, the Guantanamo Bay Detention Camp was set up under administration of American President Bush. The purpose of these camps was to detain extremely dangerous people and to interrogate them in an isolated setting as well as violators of war crimes. The location of these camps is Guantanamo Naval Base in Cuba and houses nearly 550 detainees. All the prisoners do have the right to be treated like every other citizen; however, since this area is especially set aside for prisoners have

been accused of violating war crimes, they are often discriminated against and face multiple problems. These detainees are subjected to torture

in various forms on a daily basis all of which tend to threaten their health. Over the years, the plight of the detainees has led to these detention camps being considered as the “worst of the worst.”

The massive scale of human right abuses can well be understood by the fact that they have classified six different types of abuse that prisoners here are subjected to.

These include solitary confinement, manipulation of light and sound, sexual harassment, and exposure to extreme temperatures, rape, beatings, deprivation of essential medical treatment and the usual short shackling. Consequently, every act that threatens the stability of an inmate's health is a violation of the basic principles set out for the treatment of prisoners.

#### Abuse of Human Rights of Detainees

Of the 550 prisoners residing within Guantanamo, approximately 200 of them are filing for habeas corpus petitions due to their unlawful convictions. The U.S District Courts and the Court of Appeals for the District of Columbia have been reviewing the pending petitions since 2004. The U.S. military officials have also openly acknowledged the fact that several detainees do not belong at the Guantanamo prison.

Multiple reports have been filed regarding the inhumane actions by US military officials residing within Guantanamo Bay on its prisoners. These acts have also grabbed attention of the World Health Organization because of the health standards of the detention camp. History suggests that the US government believed that any foreign prisoner at Guantanamo would have no remedy to protest his arrest in a US court; therefore, they decided that it would be an ideal location for extreme

interrogations. The cruel acts coupled with the stress of one's arbitrary detention has caused many prisoners to suffer psychological and physical injury. Reports have concluded that the victims of this psychological abuse suffer extensive damage to their mental health. In the year 2003, 350 acts of "self-harm" were reported.<sup>12</sup> This included 120 "hanging gestures," and the statistics increase as the years pass. This was followed by hunger strikes, the most serious being that of year 2005. However, the most recent strike of 2013 opened up a new chapter of unrest in the area as it lasted till July in which over 100 prisoners refused to consume meals.



The accounts of these abuses are not limited to psychological consequences. Physical abuse that occurs within Guantanamo has also led to prisoners sustaining permanent physical injury. Military reports have stated that prisoners have been thrown or dropped onto the ground or thrown against walls. Other reports admit to assailants jumping on the backs of the prisoners while shoving their heads into hard surfaces. In addition to this, the different postures that guards force their detainees into, have caused serious back, knee and other joint injuries. Prisoners have also fallen victim to medical abuse. They have also stated that the amount of health care that they will receive depends on their cooperation in the interrogation room. The military has also been caught withholding necessary

medical care, which resulted in further damage to the prisoner's health. And, prisoners have stated that doctors have furthered their pain and suffering by performing unnecessary procedures.



### Problems in closing Guantanamo Detention Camp

More than a decade has passed since the unfortunate event of 9/11 took place and despite a promise by the US government to close down this prison camp, this controversial place still remains open. Experts on this matter suggest that the delay in closure of this prison camp has a lot to do with the legal issues that stand in its way. This is associated with the lack of priority given to the matter by the president of the United States of America (Obama) as well as the obstructionist acts of the Congress, making this matter more difficult to resolve. Haider Hamoudi an associate professor at Pitt's Law School suggests that the president has not fought back very hard in response to the strong congressional resistance to closing Guantanamo Bay<sup>13</sup>. Statistics reveal that there are about 50 high-value detainees who haven't been charged and can't be charged, but they can't be let go either. The evidence is inadmissible in a respectable court system. Thus the problem remains that if these prisoners cannot be tried they are just held back and legally such an act can

only be done if a state of war is declared. Consequently, the most important issue and obstacle that stands in the way of closure of this camp is the question of what should be done with the detainees in this camp? The issue is not simply where do you hold people, or where do you transfer them, but rather, on what legal basis will the United States continue to capture, hold, and interrogate suspected al-Qaeda prisoners?

Recent events highlight the ongoing propaganda battle between the United States and al-Qaeda playing out in a Guantanamo courtroom. On the one hand, the United States wants to use the military commission to showcase the atrocities of al-Qaeda, and demonstrate a victory for rule of law over terrorism. On the other hand, al-Qaeda wants to use legal proceedings to make its own political statements, and to draw attention to alleged abuses by U.S. personnel. So far, it's al-Qaeda that seems to be winning the propaganda battle there, with little effort and a not very sophisticated strategy.

There appears to be no easy way to solve this issue. The path to closing Guantanamo will involve some combination of sending some detainees to their home countries and bringing some of them to the United States for prosecution. The really difficult dilemma for the Obama team will be what happens if there are individuals who are deemed extremely dangerous, or perhaps were directly involved in 9/11 plotting, who for one reason or another cannot be sent to a home country or third country, and cannot be successfully prosecuted.

Thus the questions remains if the current presidency is willing to continue to detain those individuals either as enemy combatants, as the Bush administration has done, or perhaps will it seek statutory authority from Congress to hold them in so-called preventive

detention.

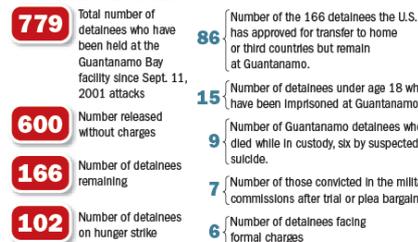
The prolonged detention of prisoners in this camp is in itself a big moral issue rather than merely a legal concern. The plight of the matter can be understood by the fact that there are 86 men at Guantanamo who have been cleared for release for years. Every intelligence agency and the Department of Defense have agreed that these men pose little or no risk to the U.S. or our allies.

Many have been held for over a decade. None are suspected of involvement in terrorist attacks. It is these men, primarily, who are engaging in the hunger strike. It is a national disgrace that Congress has essentially blocked the release of these cleared detainees.

“The handling and treatment of the prisoners at Guantanamo reflects how much we adhere to core values -- who is on the side of rule of law and normalized justice? Guantanamo gives the opposite impression of who we are as a nation. We should go about it in a way that protects the nation and adheres to its core ideal values.” Said Haider Hamoudi when asked about his opinion on the detention of men in Guantanamo Camp.

#### Guantanamo Bay detainees: facts, figures

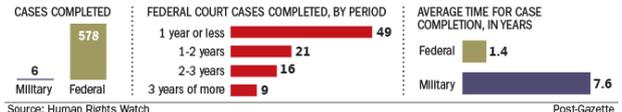
##### DETAINEES BY THE NUMBERS



##### ANNUAL COSTS



##### MILITARY COMMISSIONS VS. FEDERAL COURTS



#### Past UN action

On February 16, 2006, United Nations investigators released a detailed report amounting to fifty four pages which highlighted the treatment of Guantanamo prisoners after they held an

eighteen month long, extensive study<sup>14</sup>. The report disclosed the mass scale violations of human rights as well as international humanitarian laws that occur within the domain of this prison camp.

The United States is recognized as a member of the International Covenant of Civil and Political Rights (ICCPR), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) as well as the International Covenant on Economic, Social and Cultural Rights (ICESR). By partaking in these vile practices the US has violated the terms it explicitly agreed upon by adhering to the aforementioned treaties.

In January 2002, the United Nations High Commissioner on Human Rights (UNHCHR) monitored the situation of the detainees in the Guantanamo Bay Camp. This monitoring included interviews of the former Guantanamo prisoners as well as thorough reviews of the available data at that time. The data that was subsequently collected was followed by criticism of the US for failing to provide trial by an independent tribunal and adequate healthcare as well as persecuting detainees on grounds of their Muslim faith. These findings led to an upsurge in the international arena and amongst various world leaders, British Prime Minister Tony Blair, German Chancellor Angela Merkel, UN Secretary General Kofi Annan and Archbishop Desmond Tutu all supported the idea that the detention camp must be shut down without any delay.

The UN Committee Against Torture criticized and condemned the US record on torture (May 2006) requesting the US to close all such camps and hold accountable both military and civilian officials assisting in the torturous act and stop immediately, the unlawful indefinite detention of prisoners.

### Possible Solutions to stop Human

### Right Abuses in Guantanamo Bay

If the problem of the indefinite detention of prisoners in the Guantanamo Bay is seen in the light of the existing laws in place then the legal justification for detention is based on the law of war. This implies that during an armed conflict a nation may capture enemy fighters and hold them until the cessation of hostilities. If, at some point, the president declares an end to the armed conflict, then the only people that could legitimately be detained any further would be those who have been convicted of a crime and are serving a sentence or those who have been charged and are awaiting trial.

Studying this in the context of the possible solutions to end the Human Right abuses in Guantanamo, there are two things that the US government could do very quickly and unilaterally through executive order. One would be to declare emphatically their intention to close Guantanamo, though the president should do so with some caution as to how quickly he can do it, and leveraging his commitment to do so to get the support of some of our coalition partners who will need to step up and assist in closing it by taking some of the prisoners from us. The second short term solution that could be implemented is to revive the current interrogation guidelines for the Central Intelligence Agency [CIA]. Currently, the administration has promulgated a set of guidelines that don't go far enough in declaring certain interrogation techniques completely off limits, and any next step would require this to be corrected on immediate basis. Furthermore, it would be important for the US government to seek help from and combine with the (UNHCHR) to establish a set of health regulations and medical facilities that they ought to abide by to wash off their existing blame of practicing torture on the prisoners.

## Human Right Abuses in Abu Ghraib Prison in Iraq

### Background of issue

Abu Ghraib prison was a US army detention jail for Iraqi prisoners between years 2003-2006. The prison was located 20 miles from Baghdad and occupied a huge area of land around 280 acres<sup>15</sup>. What soon became popularly known as the “Abu Ghraib Scandal” came to the attention of the world in year 2004, that escalated quickly following the reports issued by Amnesty International regarding the abuse of Prisoners by US officials all around Iraq. Reports of brutal treatment began to emerge from what had been President Saddam Hussein's notorious Abu Ghraib prison, recently taken over by the United States. The stories of widespread abuse and torture of Iraqi civilians at the hands of coalition troops emerged throughout the summer and fall of 2003, with US government spokesmen and the President himself ignoring the emerging widespread human rights abuses in prisons and detention centers run by the US military throughout Iraq. At the height of the scandal the prison held as many as 3800 detainees, most of who lived in tents in prison yards. Following the news of this scandal the US was forced to take some action to pacify the upsurge in the community and consequently Eleven U.S. soldiers were convicted of crimes relating to the Abu Ghraib scandal. Seven of those were from Maryland-based 372nd Military Police Company. A number of other service members were not charged but reprimanded.

### Violation of Human Rights of Prisoners

A fifty-three-page report, obtained by *The New Yorker*, written by Major General

Antonio M. Taguba and not meant for public release, was completed in late February. Taguba found that between October and December of 2003 there were numerous instances of “sadistic, blatant, and wanton criminal abuses” at Abu Ghraib. This systematic and illegal abuse of detainees, he reported, was perpetrated by soldiers of the Military Police Company, and also by members of the American intelligence community. Taguba's report listed some of the wrongdoing: Breaking chemical lights and pouring the phosphoric liquid on detainees, pouring cold water on naked detainees, beating detainees with a broom handle and a chair, threatening male detainees with rape, allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell and using military working dogs to frighten and intimidate detainees with threats of attack, and in one instance actually biting a detainee. Several photographs and accounts of ex detainees confirm the list of abuses mentioned and they elaborate on the extent of sexual harassment experiences by the inmates. Pictures are revealed of Iraqi prisoners naked with bags on their heads, their bodies clumsily piled onto one another forming a human pyramid.



Such dehumanization is unacceptable in any culture, but it is especially so in the Arab world. Homosexual acts are against Islamic law and it is humiliating for men

to be naked in front of other men, Bernard Haykel, a professor of Middle Eastern studies at New York University, explained. "Being put on top of each other and forced to masturbate, being naked in front of each other—it's all a form of torture," Haykel said. The list of torture and abuse go on and the plight of the inmates can further be understood by the fact that in addition to this sexual harassment the Iraqi prisoners were subjected to psychological discomfort as well. Incidents reported include, Writing, "I am a Rapist..." on the leg of a detainee accused of rape, and then photographing him naked.

Moreover to cause physical discomfort the prison administration used to place a dog chain or strap around a naked detainee's neck and have a female soldier pose for a picture. However, the highest degree of this cruelty lies in the fact that prisoners were shown pictures of dead Iraqi detainees and these were often displayed on the walls of their prison cells.

General Taguba further found that Abu Ghraib was filled beyond capacity, and significantly undermanned and short of resources. "This imbalance has contributed to the poor living conditions, escapes, and accountability lapses," he wrote (*ibid*). There were gross differences, Taguba said, between the actual numbers of prisoners on hand and the number officially recorded. A lack of proper screening also meant that many innocent Iraqis were wrongly being detained indefinitely. The Taguba study noted that more than sixty per cent of the civilian inmates at Abu Ghraib were deemed not to be a threat to society, which should have enabled them to be released.



### Past Action to deal with Abuses in Abu Ghraib Prison

The reaction from the Bush administration characterized the issue of Abu Ghraib prison as an isolated incident not typical of the US action in Iraq. Since the scandal gained so much recognition in just a few years the US government was forced to take measures to curtail the torture and improve their international image as protectors of Human Rights.

The US has ratified the Convention Against Torture as mentioned previously. The Bush administration took the position that "Both the United States and Iraq are parties to the Geneva Conventions. The United States recognizes that these treaties are binding in the war for the 'liberation of Iraq'." Despite this the British Government resisted discussing in public the treatment deserved by the prisoners under the UN convention against torture. This convention bars not only torture, but also strictly opposes cruel or degrading treatment that may not amount to torture. The first reports of the use of "duress tactics" against detainees appeared in the "Washington Post" in December 2002, following which president Bush was called onto investigate and inquire into the treatment of the prisoners in the Iraqi prisons. In response to this criticism, the department of Defense acknowledged the fact that the United States condemns torture but failed to accept that the US had any legal obligation to refrain from

cruel degrading treatment. Similarly, no defense was provided against the allegations hurled against the US for using stress and duress tactics to extort evidence from prisoners.

In addition to this, the US has also supported the Geneva Conventions, However abuse and torture of prisoners at the Abu Ghraib prison indicates that the US is in breach of the Geneva Convention. On being questioned regarding the application of the Geneva Convention to the existing techniques used by the US against prisoners, the US government replied in the following words, “The reality is the set of facts that exist today with the al-Qaeda and the Taliban were not necessarily the set of facts that were considered when the Geneva Convention was fashioned.” At the same time, a series of legal memoranda written in late 2001 and early 2002 by the Justice Department helped build the framework for circumventing international law restraints on prisoner interrogation. These memos argued that the Geneva Conventions did not apply to detainees from the Afghanistan war, leaving the United States with greater room to continue the mass human right violations they were already engrossed in.

### Current Situation

The prison’s location in the west of the capital, close to the western province of Anbar which, currently in the throes of open rebellion against the central government in Baghdad, has made it difficult to control. Insurgents have controlled Falluja and other areas of Anbar, including sections of Ramadi, the provincial capital.

The Iraqi Army, which has sought to use loyal tribesmen inside Anbar communities as proxy fighters, giving those American-supplied guns and ammunition, has held off on a full-out

assault. But after three months, the fighting still rages resulting in thousands of Anbar residents being displaced. Recently, nearly 8,000 Iraqi civilians were killed in attacks, according to the United Nations, the highest level in at least five years<sup>17</sup>.

Lately, the fighting has crept closer to the Abu Ghraib prison, with frequent gunfights in the streets near the compound. An ongoing fight between the government and Sunni rebels has altered Iraq’s security landscape and forced the government to abandon the prison complex. At present in the year 2013, after struggling to maintain order over a system that houses over two thousand detainees, the Iraqi government has announced it is closing Abu Ghraib’s doors and transferring its inmates to other prisons throughout the country.

Attempts at a mass breakout by Al-Qaeda fighters in the same year resulted in hundreds of prisoners escaping from the Abu Ghraib prison. This was followed by a shootout that killed approximately 50 prisoners and many members of the Iraqi security forces as well<sup>18</sup>. Some of those escapees have become top leaders of the Islamic State of Iraq and Syria, now a Qaeda splinter group that has taken on an active, and brutal, role in the civil war in Syria and the rising insurgency in Iraq. Many other escapees have filled the fighting ranks of the group in both countries, along with militants who have escaped from other Iraqi jails in recent times.

It is suggested that even before reports of the prison closing down, were disclosed to the public the government had already been emptying the prison over several nights, under protection of Special Forces soldiers, during a curfew in which use of vehicles was prohibited. While still standing, it’s not clear if Abu Ghraib, once closed, will ever re-open. A bastion of torture and a symbol of scandal, the prison has now assumed a

new reputation: as a place Iraq's newest leaders cannot control.

**Country and Regional Bloc  
Stances/ Stances of different  
Personalities and  
Organizations**

**United States of America**

History bears evidence that the United States of America has been consistently accused of having many problems dealing with human rights' abuse in prison. This accusation, however, is not the complete truth. As per the Human Rights Watch report in the World Report 2013, "The enormous prison population in the United States partly reflects harsh sentencing practices contrary to international law." The sentencing practices include disproportionately long prison terms, mandatory sentencing without parole, and treating youth offenders as adults. The US maintains the world's largest incarcerated population, at 1.6 million, and its highest per capita incarceration rate.

Human Rights Watch research in 2012 found that the massive over incarceration includes a growing number of elderly people whom prisons are ill-equipped to handle, and an estimated 93,000 youth under age 18 in adult jails and another 2,200 in adult prisons. Hundreds of children are subjected to solitary confinement. Racial and ethnic minorities remain disproportionately represented in the prison population.

The United States has shown little interest in tackling abusive practices that have contributed to the country's huge prison population.

Unfortunately, it is society's most vulnerable – racial and ethnic minorities, low-income people, immigrants, children, and the elderly – who are most likely to suffer from injustices in the criminal justice

system.

Maria McFarland, deputy US program director

The US holds the dubious distinction of being the only known country where individuals are serving life sentences without parole for convictions of crimes carried out when they were under the age of 18. There are 2,574 such youth offenders condemned to spend the rest of their lives in prison. Although the US Supreme Court ruled in June 2010, in *Graham v. Florida*, that life without parole cannot be imposed on young defendants convicted of non-homicide offenses, this will have no effect on the majority of these young people who are convicted of murder. Furthermore, at Guantanamo, the U.S.

government sought to hold detainees in a place neither U.S. nor international law applied.

However, the United States actions towards human rights abuse has not gone unnoticed by the government.

Human rights developments within the United States over the past year include:

- Connecticut joined 16 other states and the District of Columbia in abolishing the death penalty. However, 33 states continue to allow it;
- In May, the US Department of Justice issued final standards under the Prison Rape Elimination Act (PREA) to detect, prevent, and punish prison rape. The standards are immediately binding on all Justice Department facilities;
- The US Senate, in December, failed to ratify the Convention on the Rights of Persons with Disabilities. Sixty-one of the 100 Senators voted in favor, but 66 votes were needed for passage. Several senators have promised to make another attempt to ratify the treaty in early 2013;
- Congress failed to renew the Violence Against Women Act (VAWA), the primary federal law providing legal protection and services to victims of domestic and sexual violence. Sexual assaults remained underreported and

poorly investigated in many jurisdictions. Certain groups, such as unauthorized migrant farmworkers, face particular challenges to seeking justice.

## China

China's criminal justice and prison system is known for being notoriously opaque—trials move swiftly, the guilty sometimes disappear. The UN sent the personal in 2005 to observe the prison conditions in China. According to the conducted interviews, cells were between 7 and 21 square meters, and between six and sixteen inmates were crammed inside. They slept, defecated, ate appalling food and were not physically and psychologically tortured by the guards or “hired” inmates on a daily basis. Beatings, starvation, and forced labor are all parts of life for those ‘stuck’ in Chinese prisons. Even minor complaints could result in punishment or even death for yourself or an inmate. The compulsive conditions resulted in several inmates attempting to commit suicide. Only some succeeded. Those who didn’t were punished severely. Guards would sometimes extract confessions from prisoners for the crimes they were accused of: they would break fingers, apply electric shocks, or if they did not want the injuries to show, would simply expose prisoners to the freezing weather, or force them into stress positions for hours. China executes its prisoners either through lethal injections or shooting. Lethal injection and shooting are the only methods authorized by China's Criminal Procedure Law of 1996. Shooting executions were discontinued in 2010 per a People's Supreme Court ruling of February 2009 which held that lethal injection is a more humane form of execution than shooting. Lethal injection (using a mixture of barbiturates, muscle relaxant, and potassium chloride) was

legalized in 1996 and has been used since the late 1990s. In June 2009, the Chinese government announced that it was a long-term objective to replace the firing squad with lethal injection. It is carried out in prisons or in mobile “death vans,” where prisoners are reportedly strapped to an electric-powered stretcher and injected with lethal drugs. The use of these vans has been decreasing since the late 2000s due to the expense of maintaining the vans.

At least one source reports that persons convicted of economic or political crimes may be more likely to be executed by lethal injection than persons convicted of general crimes, who may be more likely to be shot; however, that same source indicates that lethal injection in a prison facility is a less expensive form of execution and was initially implemented in high crime-rate areas where it would be more likely that offenders were being executed for general crimes. The cost of a single dose of lethal injection is cheaper—at 300 yuan—than the 700 yuan price tag of a firing squad. Scholars point to this factor, profit, ease of secrecy, and reduction of family complaints (due to massive disfigurement caused by shots to the back of the condemned’s head) as factors motivating the switchover to lethal injection, which has progressed at a slow pace.

## European Union

In the face of a political and economic crisis affecting the European Union and many of its member states, protection of human rights was rarely a priority or focal point for the European Union in 2012, especially when those negatively affected were marginalized or unpopular groups, such as Roma, migrants, and asylum seekers.

In France, The European Committee for the Prevention of Torture (CPT) expressed concern in April about conditions and treatment in police and

immigration detention, prisons, and psychiatric facilities, recommending further reforms to ensure that all suspects can access a lawyer from when they first enter police custody. Parliament adopted a new sexual harassment law in late July, after the Constitutional Court struck down previous legislation for vagueness. The new law protects a broader range of situations beyond employment and introduces protections based on gender identity. In November the government tabled a bill to legalize same-sex marriage.

In October, one man was killed and eleven arrested in multi-city raids following a mid-September grenade attack on a Jewish supermarket outside Paris. At this writing, parliament was examining draft legislation to criminalize acts of terrorism abroad by French citizens. The measure, first proposed by the previous administration after a man claiming to be inspired by al-Qaeda shot seven people in March—including three Jewish children and a rabbi—would allow prosecution for participating in terrorism training abroad.

A driving force for prison reform since the 1960s, the Council of Europe is working to improve the treatment of those imprisoned or otherwise deprived of their liberty. Its steering and expert committees develop standards on the basis of relevant judgments of the European Court of Human Rights, criteria determined by the European Committee for the prevention of torture (CPT), and observations and recommendations made by the Commissioner for Human Rights. CPT was established in 1987 and composed of independent, impartial experts from a variety of professional backgrounds (lawyers, medical doctors, specialists in prison or police matters).

In many countries, national courts have condemned police officers for infliction of ill-treatment and torture on detainees.

The European Court of Human Rights has confirmed that ill-treatment and torture still occur today in Europe. The CPT has also been led to conclude that in some instances detainees run a great risk of serious ill-treatment and/or torture by the police.

The CPT has heard the following allegations, in certain cases supported by medical evidence.

- Suspension by the legs with the head just a few centimeters above the ground;
- The application of electric shocks to various parts of the body (including the penis);
- The placing of a metal bucket on the head and then striking it with blows from wooden sticks;
- Blows struck with truncheons or wooden clubs;
- “Falaka” (beatings on the soles of the feet).

In most cases, however the CPT is confronted with less severe forms of ill-treatment of detainees, such as the infliction of slaps, punches, kicks or verbal abuse both at the time of arrest and during custody.

Moreover, The Committee on crime problems (CDPC) implements and harmonises national policies in the fields of criminal law, criminal procedure, crime prevention and the treatment of offenders. It promotes the implementation of the European Prison Rules and has proposed for adoption by the Committee of Ministers more than 20 binding instruments and some 100 recommendations on various aspects of criminal law. Recently, the Council of Europe has also

paid attention to the issue of prison overcrowding and negligence of right of foreign prisoners. Held every two years since 1972, these conferences allow prison officials to take stock of good practice and possible problems in the implementation of Council of Europe standards and to discuss the

recommendations of the Committee of Ministers, the European Prison Rules and priority topics - e.g. women in prison, healthcare, education, juveniles or foreign prisoners.

### **African Union**

Those incarcerated in African prisons face years of confinement in often cramped and dirty quarters, with insufficient food allocations, inadequate hygiene, and little or no clothing or other amenities. While these conditions are not uniform throughout the continent, their prevalence raises concern and needs to be addressed through prison reform and attention to human rights. Moreover, there are also several barriers—including state secrecy, weak civil society, and lack of public interest—that inhibit the collection of reliable data on African prisons. This veil of ignorance as to prison conditions merely fuels the neglect and abuse of Africa’s incarcerated. It is nonetheless imperative to investigate African prisons and generate information about the issues affecting the continent’s penal system.

### **Overcrowded and under-resourced**

Overcrowding is perhaps the single most pressing concern facing African prisons. African nations such as Cameroon, Zambia, Burundi, Kenya, and Rwanda comprise the majority of the world’s most overcrowded prisons. 17 Like many of the challenges facing African prisons today, overcrowding has its roots in the continent’s colonial past. African prisons have been at or above capacity nearly since their inception. Given the many challenges facing postcolonial Africa, it is little wonder that prisons have been left off the endless development to-do lists of many postcolonial governments. Prior to examining the size of the prison population in Africa, a word must be said about the physical conditions in

which such populations are maintained. It should come as no surprise that prisons throughout Africa languish in disrepair. The buildings are old, poorly ventilated, with inadequate sewage systems. Such conditions are ripe for the transmission of communicable diseases. Prisoners often lack space to sleep or sit, hygiene is poor, and food and clothing are inadequate. 18 Amid such decay and deprivation, overburdened prison staff has found it difficult to supervise prisoners or provide higher standards of sanitation and nutrition.

African prisons at times house “crowded cells where inmates sleep in shifts; (...) warders who ‘sell’ juvenile offenders for sex with other cons; and (...) guards who smuggle weapons, drugs and alcohol to paramilitary inmate gangs”. HIV/AIDS-related deaths in prison have risen exponentially in the past decade. Confined and crowded living quarters also lead to sexual assault and suicide. While many African prisons do not suffer from such extreme violence and health problems, the presence of these trends in any prisons raises concern. 23 In condemning the conditions of African prisons, journalist Michael Wines argued in 2004 that:

“The inhumanity of African prisons is a shame that hides in plain sight. Black Beach Prison in Equatorial Guinea is notorious for torture. Food is so scarce in Zambia’s jails that gangs wield it as an instrument of power. Congo’s prisons have housed children as young as 8. Kenyan prisoners perish from easily curable disease like gastroenteritis.”

### **Women and children in African prisons**

The plight of women and children in African prisons has largely been ignored by penal policymakers. As a result, these vulnerable populations are particularly marginalized within an already substandard living environment. While some inroads are being made within the

European, North American, and Australian penal systems to better accommodate women and children, the issue receives little to no attention in Africa where, as elsewhere, prison administration remains a decidedly male- and adult-dominated milieu.

## Women

With regards to women, there are several critical problems faced by women in prison - most are unmet in the prison environment. Women in prison have experienced victimization, unstable family life, school and work failure, and substance abuse and mental health problems. Social factors that marginalize their participation in mainstream society and contribute to the rising number of women in prison include poverty, minority group member, single motherhood, and homelessness.

While in prisons, women, like prisoners throughout the world, face specific pains and deprivations arising directly from their imprisonment. Women in African prisons are overwhelmingly poor and uneducated. They are frequently incarcerated for crimes such as murder and attempted murder, infanticide, abortion, theft and alcohol brewing (Sudan). Sexism is apparent in the criminalization and sentencing of certain conducts. For example, in many countries abortion—which only women can obtain—is punished by life sentence. Once in prison, discrimination against women persists. Vocational and recreational programs are more often than not inadequate. Prisons often lack appropriate supplies to accommodate menstruating women.

While some prison systems provide separate facilities for the incarceration of women, in most countries, women are imprisoned in the same facilities as men. Even in cases where women are incarcerated separately, these facilities experience violence and abuse akin to

that found in male facilities. Moreover, women prisoners are particularly vulnerable to sexual abuse by prison guards whether in female or mixed prisons.

## Juveniles/Children

South African prisons accommodate the highest number of child prisoners in Africa at 3,600. Namibian prisons house the largest percentage of



children, at 5.5 percent of the country's total prison population. Children are usually incarcerated for crimes that include such minor and petty offenses as vagrancy, not carrying proper identification, loitering, truancy, begging, and being beyond a parent's control. For these slight infractions, children can be detained pending trial during the most formative years of their development.

As is true for women, most African prison systems besides those in South Africa, Côte d'Ivoire, Mali, and Angola Tunisia lack the resources to house children separately from the adult male population. The co-mingling of children with the general prison population can lead to disastrous consequences. First, children imprisoned with the general population must compete with adults for scarce resources such as food. Second, given that African prisons fail to meet even the most basic minimum standards for adults, it should come as no surprise that they fall far short of meeting international standards for juvenile detention. For example, overcrowding

compromises child prisoners' health and hygiene and exposes them to increased risk of sexual abuse. The educational, developmental, health, and nutritional needs of the juvenile are left unattended.

### **Prison resources and governance**

The conditions described above result in part of a scarcity of resources and good governance. Indeed, resource scarcity is one of the most significant challenges facing African prisons today. On a continent of so many social needs, protection of prisoners is far from the top of many priority lists. Moreover, the consensus of opinion is that prison is a locus for detention, punishment, and deterrence as opposed to rehabilitation and reintegration.<sup>49</sup> As a result, African prisons experience a high rate of recidivism, which further strains the social and financial resources of already impoverished nations.<sup>50</sup> In addition, resource scarcity leads to deprivation of prisoners. Good prison governance is difficult to define and measure, partly because there has been very little research on identifying good practice in Africa, particularly in the areas of administration, management, and proper function. Several international instruments outline international consensus on topics such as acceptable objectives, conditions, and treatment of criminals in prisons.<sup>51</sup> In addition, the rise of crime in Africa, the drop in resources, and the belief that imprisonment is a form of discipline have all conspired to render prison conditions outright atrocious in some nations.

The shortage of well-trained staff also hinders the governance of African prisons. Staff shortages can inflame already stressed prison staff, leading to additional challenges within problem-laden systems. Incompetent staff can worsen existing states of affairs for prison administrators. When prisons

lack sufficient staff, prisoners must be confined to their cells, thus exacerbating the problems associated with the overcrowding described above.

Inadequate staff also hampers the design and delivery of rehabilitation programs, thereby adding to the challenge of overcrowding and recidivism. Finally, good governance is essential to maintaining public health baselines within African prisons. Increased staff and more efficient methods are needed to ensure waste disposal, better food, increased rations, and adequate measures to fight the spread of disease, especially HIV/AIDS. Public health educators are needed to teach prisoners how to avoid contracting HIV, condoms must be provided, and HIV-positive prisoners must receive adequate health care.

### **Middle East**

The prison and detainee's conditions in the Middle East do not appear very promising either. The Arab League has expressed its concerns about the deteriorating conditions for Palestinian detainees in Israeli jails and stressed that Israel must abandon its policy known as administrative detention. The Israeli occupation authorities use administrative detention to indefinitely hold Palestinians based on "secret evidence" without trial or being convicted of any crime.

"For decades, Amnesty International has urged Israel to end the practice of administrative detention and to release detainees or charge them with an internationally recognizable criminal offence and try them according to international standards."

Ann Harrison, Amnesty International's Deputy Director for the Middle East and North Africa  
Along with keeping the detainees for an infinite amount of time, they have been subjected to violations such as the use of

torture and other ill-treatment during interrogation, as well as cruel and degrading treatment during their detention, sometimes as punishment for hunger strikes or other protests.

In addition, administrative detainees and their families must live with the uncertainty of not knowing how long they will be deprived of their liberty and the injustice of not knowing exactly why they are being detained.

According to a Human Rights Watch report earlier this year, mass beatings in Iranian prisons received much spotlight. Prison guards severely beat several dozen political prisoners in Tehran's Evin Prison in April 2014. In a May 22 letter to Iranian judiciary officials responsible for the administration of the prison system, Human Rights Watch expressed concern about the credible reports of severe beatings in Ward 350 on or after April 17. No meaningful remedies had been taken by the Iranian government till that point.<sup>23</sup> Amnesty International continues to document serious human rights violations in Iran including detention of human rights defenders and other prisoners of conscience, unfair trials, torture and mistreatment in detention, deaths in custody and the application of the death penalty. Iran executes more people than any country in the world, other than China. Ethnic, religious and linguistic minority communities face persistent persecution. However, some signs of hope have appeared since the election of Hassan Rouhani in June 2013. In September 2013, human rights attorney Nasrin Sotoudeh, on whose behalf Amnesty International activists and its partners campaigned since her arrest three years ago, was released from prison, along with other prisoners of conscience.<sup>24</sup>

The Iran judiciary may be hoping that stonewalling will make the reports about mass beatings of prisoners go away, but the response is yet another

damning indictment against a judiciary that has proven both unwilling and unable to administer justice. Judicial officials owe these men and their families at least an acknowledgement that those who ordered and carried out these beatings will be punished.

Joe Stork, deputy Middle East director.

### Past UN Action

The protection of inmates' rights demands urgent attention. If we are as a community at all concerned about human rights then it must be recognised that inmates are at a greater risk than any other group. They are vulnerable because they are out of sight and without credibility in the public's eyes, which makes it all the more important that the rights of prisoners should be strictly observed (Ministerial Committee of Inquiry, 1989:26.3).

The United Nations has been adapting its human rights machinery in order to better respond to the changing demands of the international community. During the cold war, the United Nations created the normative and institutional structures for international human rights protection, steadily broadening its competence in this area. Thematic Areas of Work in the field of

Prison Reform and Alternatives to Imprisonment

UNODC's technical assistance in the area of prison reform covers the following thematic areas:

The UN Peacekeepers have also played a significant role in realizing that human rights in prisons need protection. Many systems of justice entail punishment by imprisonment, but there are standards that this punishment must meet. They've

worked to assist national prison systems to keep prison inmates in safe and secure custody under humane conditions:

Specifically,

- Advising national prison authorities on institutional restructuring;
- Providing advisory and mentoring services;
- Training and building national capacity;
- Helping to build partnerships with governmental and nongovernmental organizations.

Peacekeeping Corrections Officers include prison managers, engineers, trainers, health and safety specialists and counsellors.

The UN Peacekeeper's Corrections specialists have strengthened and created new partnerships with leading organizations in the field to work to address the complex issues surrounding corrections, including.

### **The International Centre for Prisons Studies (ICPS)**

The International Centre for Prison Studies was established in 1997. It was decided from the outset that the Centre should be independent of governmental and intergovernmental agencies, although it would work closely with them. It was also decided that it needed to be located in an outstanding academic environment. Between 1997 and 2010 the Centre was based in King's College London. In 2011 ICPS entered into an academic partnership with the University of Essex. Understanding the significance of an internationally acceptable prison reform, the ICPS have been consistently working on publications, one of the primary being the World Prison brief to bring awareness to the issue at hand. The World Prison Brief (WPB) was launched on 28 September 2000 and is a data-base which provides information about

prison systems throughout the world. It thus enables more evidence-based discussion of ways to improve prison systems in accordance with international human rights standards.

### **The International Corrections and Prisons Association (ICPA)**

Founded in 1988, ICPA is a nongovernmental organization in Special Consultative Status with the Economic and Social Council of the United Nations (ECOSOC) and represents a membership of 80 countries all over the world. It has held successful conferences, in Oslo, Norway in 2008 and in Nigeria in 2009. It also conducted a NATO Advance Research Workshop in Eliat, Israel on the subject of Human Rights and Terrorism.

### **Prison Elimination Act (PREA)**

The Prison Rape Elimination Act (PREA) was passed in 2003 with unanimous support from both parties in Congress. The purpose of the act was to "provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, and recommendations and funding to protect individuals from prison rape." (Prison Rape Elimination Act, 2003). In addition to creating a mandate for significant research from the Bureau of Justice Statistics and through the National Institute of Justice, funding through the Bureau of Justice Assistance and the National Institute of Corrections supported major efforts in many state correctional, juvenile detention, community corrections, and jail systems. The act also created the National Prison Rape Elimination Commission and charged it with developing draft standards for the elimination of prison rape. Those standards were published in June 2009, and were turned over to the

Department of Justice for review and passage as a final rule. That final rule became effective August 20, 2012.

In 2010, the Bureau of Justice Assistance funded the National PREA Resource Center to continue to provide federally funded training and technical assistance to states and localities, as well as to serve as a single-stop resource for leading research and tools for all those in the field working to come into compliance with the federal standards.

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

The International Convention on Civil and Political Rights was established on the 23rd March 1976. Article 10 of the International Covenant on Civil and Political Rights states that any person deprived of their liberty shall be treated with humanity and dignity. The article has emphasized on the requirement of separation of prisoners in pre-trial detention from those already convicted of crimes, as well as a specific obligation to separate accused juvenile prisoners from adults and bring them before trial speedily. There is also a requirement that the focus of prisons should be reform and rehabilitation, not punishment. These provisions apply to those in prisons, hospitals (particularly psychiatric hospitals), detention facilities, correction facilities or any other facility in which a person is deprived of their liberty. The article complements article 7 of the Covenant,<sup>28</sup> which bans torture or other cruel, inhumane or degrading treatment, by guaranteeing those deprived of their liberty with the same conditions as that set for free persons.

### **UN Standard Minimum Rules for the Treatment of Prisoners**

The standards though not legally binding offer useful guidelines in

international and municipal law with respect to any person held in any form of custody. The document sets out standards for those in custody covering registration, personal hygiene, clothing and bedding, food, exercise and sport, medical services, discipline and punishment, instruments of restraint, information to and complaints by prisoners, contact with the outside world, books, religion, retentions of prisoners' property, notification of death, illness, transfer, removal of prisoners, institutional personnel and inspection of facilities. Furthermore, it also facilitates in setting out guidelines for prisoners under sentence which further includes treatment, classification and individualization, privileges, work, educations and recreations, and social relations and after-care. Special provisions for insane and mentally abnormal prisoners, prisoners under arrest or awaiting trial, civil prisoners and persons arrested or detained without charge have also been established in these standards.

### **Standard Rules for Treatment of Prisoners 2013 and Current Situation**

This resolution among other things, takes into account the standards set down in the 1995 resolution on the treatment of prisoners. It emphasizes the role of intergovernmental and nongovernmental organizations to take part in the process of welfare of prisoners. As a result, there have been significant developments in the way that prisons are managed in many countries. One example in a number of jurisdictions has been the large rise in the number of prisoners held in high security conditions, often either in total isolation or having minimal direct contact with any other person. This is justified on the grounds of the threat which such prisoners would pose were they to escape, or the danger that they present to

other prisoners or staff, or the influences which they have over other prisoners. Lastly, general security arrangements in most countries have become more sophisticated in terms of on the movements of individual prisoners.

### Questions a Resolution Must Answer

- How can the UN ensure that the health services of the prisoners are equivalent to those provided to the citizens of a state?
- How can the UN ensure that sufficient funds are allocated to avoid prison mismanagement and over-utilization of staff?
- What actions could be taken to make sure that the health risks are at a minimum while simultaneously guaranteeing that the human rights and dignity of the prisoners will be respected?
- What actions can be ensured to safeguard the physical and emotional rights of women and LGBTs in prisons?
- What measures should be put into practice to ensure the detainees are guilty and rightfully kept in custody?
- Can the UN come up with a substantial and unanimous law regarding the Death Penalty and the conditions of Death Row patients?
- In light of the Guantanamo Bay cruelties, how far is the United States accountable for the atrocities committed and what punishment (if any) should be imposed on perpetrators of such acts?
- Would closing the Guantanamo Detention Camp be an acceptable decision and helpful in putting an end to the torture that is committed?
- In what ways can prisoners be

protected against invasions to their privacy that takes place outside the prison cells? (E.g. posting of pictures and videos online)

- What measures can the United Nations take to ensure that the laws for prisoner's rights have been universally applied, for instance, in dealing with the resistance faced by China, or in circumstantial times such as war?

### Further Reading

- <http://www.hrw.org/worldreport/2013/countrychapters/european-union>
- [http://www.surjournal.org/eng/conteudos/getArtigo9.php?artigo=9,artigo\\_sarkin.htm](http://www.surjournal.org/eng/conteudos/getArtigo9.php?artigo=9,artigo_sarkin.htm)
- [http://transequality.org/PDFs/JailPrisons\\_Resource\\_FINAL.pdf](http://transequality.org/PDFs/JailPrisons_Resource_FINAL.pdf)
- <http://www.justdetention.org/pdf/ImpunitySexualAbuseinWomensPrisons.pdf>
- <http://www.nybooks.com/articles/archives/2001/may/31/women-in-prison/>
- [http://www.prisonpolicy.org/scans/women\\_prison.pdf](http://www.prisonpolicy.org/scans/women_prison.pdf)
- <http://www.amnestyusa.org/our-work/issues/security-and-human-rights/guantanamo>
- <http://eudevdays.eu/topics/promoting-prisoners%E2%80%99-human-rights>