Research Report

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Forum: *Human Rights Council*
Issue: *Human rights of prisoners*

Position: *Deputy Chair*

Introduction

At this moment, there are more than 10.2 million people imprisoned worldwide and new people are imprisoned every day. As a result, violations of Human Rights happening in prison are being observed more and more. Countries all over the world deal differently with their prisoners and a lot of them do not respect the Human Rights. Under international human rights law, no one can be detained without a legitimate reason and anyone accused of a crime has the right to a fair trial. But in many countries throughout the world, no proper process is followed. Sometimes there are no lawyers present during interrogations or no independent doctors on-hand to examine detainees. Or confessions obtained by torture are used as evidence, which also doesn't respect the rights of prisoners. Subjects like these are very important to Human Right bodies and are taken seriously. There are two bodies of international law governing the treatment of prisoners in general: The Standard Minimum Rules for the Treatment of Prisoners and The Basic Principles for the Treatment of Prisoners. The downside of these documents is that they are not legally binding and therefore not all prisoners have the human rights they deserve.

Definition of Key Terms

Beijing rules

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

Tokyo rules

United Nations Standard Minimum Rules for Non-custodial Measures.

Prisoners of conscience

A person that has not used or advocated violence but is imprisoned because of who they are or what they believe. This could be because of their sexual orientation,

ethnic, national or social origin, language, birth, colour, sex or economic status or religious, political or other conscientiously held beliefs.

Arbitrary detention

This means that a person is being detained for no legitimate reason or without legal process.

Incommunicado

This means being detained without access to family, lawyers etc.

Secret detention

This means being detained in a secret location.

Unfair trials

Trials conducted without ensuring minimum legal process.

General Overview

When talking about the Human Rights that prisoners have and deserve to have, we can see that there are 7 key problems in the world:

1. Prisoners of conscience

Prisoners of conscience exist even though international standards protect the human rights and fundamental freedoms of all individuals worldwide. The Universal Declaration of Human Rights reaffirms equal rights for men and women, and states that everyone is entitled to all the rights and freedoms it sets forth, without distinction of any kind. Everyone has the right to life, liberty and security of person. No one is to be subjected to arbitrary arrest, detention or exile. Everyone has the right to freedom of thought, conscience and religion, to freedom of opinion and expression, and to freedom of peaceful assembly and association.

Yet, governments imprison, torture and sometimes execute people because of their views, who they are or what they believe. The "crimes" of which prisoners of conscience are accused of or have been convicted for, should not be crimes at all. When governments imprison people for these reasons, they restrict the flow of information, narrow the space for independent civil society, diminish the power of

people to express their views and prevent challenges to their authority. Artists, bloggers, community activists, dissidents, journalists, human rights activists, lawyers, labour leaders, teachers, religious leaders, and members of religious communities are among the prisoners of conscience found around the world today.

2. Arbitrary detention

The Universal Declaration of Human Rights provides in article 9 that "no one shall be subjected to arbitrary arrest, detention or exile". Since detention itself is not a violation of human rights, international law has progressively tried to define the limits beyond which a detention, whether administrative or judicial, would become arbitrary. According to the Working Group on Arbitrary Detention deprivation of liberty is arbitrary when it is clearly impossible to show the legal basis that justifies the deprivation of liberty, when the deprivation of liberty results from the use of their Human Rights and/or freedoms or when the non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character. Unfortunately there are a lot of cases in both western and developing countries wherein a person is under arbitrary detention. Currently 32 percent of all inmates has not had a trial yet and 58 percent of countries investigated have conducted unfair trials.

A lot of developing countries have an underdeveloped legal system and a corrupt government, but the major problem is a lack of lawyers in these countries. In most developing countries there is only one lawyer per 50,000 people. This means that a lot of persons do not get a lawyer to support them in court. The fact that there are so few of them per person makes it impossible for these lawyers to be of good quality. So a lot of people in developing countries do not get a trial and even if they have a trial, than it is very hard to find a good lawyer.

3. Incommunicado

Pocketbook of International Human Rights Standards for Prison Officials provides in article 7 that: "All prisoners shall have the right to communicate with the outside world, especially with their families." Incommunicado is mostly employed as a form of punishment beyond incarceration for a prisoner, usually for violations of prison regulations. However, it can also be used as an additional measure in order to protect vulnerable inmates. Some inmates are at high risk of suicide and by preventing them from being in contact with other inmates, their access to items that could allow self-harm is decreased. Nonetheless, keeping inmates from communicating with people outside prison is wrong and causes permanent damage for the inmate in question. Research has shown that human beings have a fundamental need for inclusion in group life and for close relationships, because it helps keeping them

motivated in life. Psychologists say that if our social needs are not met, this can take a serious toll on our health, eroding our arteries, creating high blood pressure, and even undermining learning and memory. By holding inmates imprisoned under incommunicado, the basic rights of a person are not met and this can have both mental and psychical consequences for the person in question.

4. Secret detention

Secret detentions occur when detainees are held incommunicado and when the detaining authorities refuse to acknowledge either the fact of the detention, or the fate and whereabouts of the detainee. So the inmate is held imprisoned under incommunicado without acquaintances knowing where they are imprisoned or that they are imprisoned. It is important to note that the detention site itself does not have to be secret for the detention to be secret. Whether the detention is secret or not is determined by its incommunicado character and by the fact that the state authorities do not disclose the place of detention or details about the fate of the detainee. This means that officially recognised detention facilities, and even secret wings within officially recognised detention facilities, can be used for secret detentions. Despite international norms forbidding secret detention, the practice remains, and has been used by counter-terrorism operations. The United States for example used secret detention in response to the 9/11 terrorist attacks. Terrorism is frequently framed in vague terms and in this way the public's access to information is limited, which violates its right to information. Secret detention does not only conceal the impact on victims and their families, but also hides human rights violations from the public in the name of security. An inmate that is under secret detention or incommunicado is more at risk of torture and abuse, because these human right violations cannot be reported to the outside world.

5. Inadequate prison conditions – such as overcrowding, diseases HIV/AIDS and TB and prolonged solitary confinement.

At least 115 countries in the world have prisons that face the problem of overcrowding and 29 of these countries even operate at between 150 percent and 200 percent of their capacity. An explosion in the use of indeterminate sentences and the increased use of long determinate sentences are key drivers behind the near doubling of prison numbers in the past two decades. Prison overcrowding is one of the key contributing factors to poor prison conditions around the world. It is arguably the biggest single problem facing prison systems and its consequences can at worst be life-threatening at best prevent prisons from fulfilling their proper function. Overcrowded prisons are not able to give their inmates good access to basic human needs such as health care, nutrition and accommodation. As a result, the prisons get bigger problems such as HIV/AIDS and TB patients under the inmates. Prisons are a

high-risk environment for infectious diseases with drug use and needle sharing, tattooing with homemade and unsterile equipment, high-risk sex and rape commonplace. Bad access to basic healthcare and malnutrition weakens the immune system, making inmates living with an infectious disease more susceptible to getting ill. An adult inmate for example is 2 to 50 times more likely to have HIV than the general adult population outside prison. Next to overcrowding and all its effects, there is also the issue of prolonged solitary confinement. Solitary confinement is a type of incommunicado wherein the inmates are kept inside a cell that is approximately 80 square feet, smaller than a typical horse stable. Food is delivered through a slot in the door, and each day inmates are allowed just one hour of exercise, in a cage. For most of the 20th century, a typical stay in solitary amounted to just a few days, or several weeks in more extreme cases. Today, it's not unusual for inmates to spend years at a time in solitary. Supporters say the practice helps keep prisons safe, but according to the medical literature, solitary confinement can also mentally damage the prisoners in question. Stuart Grassian, a board-certified psychiatrist and a former faculty member at Harvard Medical School, has interviewed hundreds of prisoners in solitary confinement. In one study, he found that roughly a third of solitary inmates was "actively psychotic and/or acutely suicidal." Grassian has since concluded that solitary can cause a specific psychiatric syndrome, characterized by hallucinations, panic attacks, overt paranoia, diminished impulse control, hypersensitivity to external stimuli and difficulties with thinking, concentration and memory. Many say that solitary confinement is a good solution to violence in prisons, but the laws are broken when this solitary confinement lasts longer than a few weeks.

6. Unfair trials

An unfair trial is one conducted without ensuring minimum legal process. Prisoners of conscience and political prisoners are the people that mostly do not get a fair trial. In countries like China, Egypt and even Western countries like the United States of America, people are still imprisoned because of who they are. Having an unfair trial is possible due to the fact that prosecutors and lawyers have an opinion as well and they do not separate ones opinion from the truth. Although the rights to liberty, security and equal justice under the law are cornerstones of all justice systems, still 58 percent of countries researched (93 out of 160) have conducted unfair trials. As a result, there are thousands of innocent people imprisoned and the internet presents the world with stories wherein these innocent people are finally released after 28 years in prison. These people receive money from the government to make up for all those wasted years, but that does not give them their lives back. Making mistakes is what makes everyone human, but unfair trials can be avoided.

7. Torture and other forms of ill-treatment.

The Geneva Conventions ban the use of "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture". There are however two loopholes in these Conventions. Firstly, the Convention Against Torture only applies on a country's own soil and secondly, the laws from the Convention do not apply to spies and terrorists. Since a country cannot use torture on its own soil, there are lots of countries where prisoners are tortured on non-governmental soil. Take for example the situation in Guantanamo Bay. Inmates are brutally tortured here on a daily basis, but since the military basis is not on US soil, it is legally acceptable. As for the second loophole, when someone is a terrorist is very hard to answer and subjective. Countries like Syria detain innocent people every day and the documents will say that they are terrorists or spies. In short, it is not very difficult to torture a person while not breaking the Geneva Conventions. Research has shown that men and women who have experienced torture are most often irrevocably changed, according to medical professionals who have treated survivors. Depression, anxiety, personality shifts, hallucinations and suicidal thoughts can manifest and persist years afterward. When the inmate is released, the freedom itself is overwhelming, since they were used to give their lives over to another's control. Torture has permanent consequences for the victim's mental and physical health and breaks rights such as the right to safety and liberty.

Next to these main problems that imprisoners face, another problem has also been pointed out recently in countries such as the United Kingdom, Italy, Russia, Turkey and Austria. The European Court of Human Rights has shown that a lot of countries ban their prisoners from the voting process and according to them this is a breach of the prisoners' human rights. Important decisions are made by the government, and because those decisions also affect the inmates in that country, these people deserve their voting right.

Major Parties Involved

OHCHR

The Office of the United Nations High Commissioner for Human Rights represents the world's commitment to universal ideals of human dignity. It has a unique mandate from the international community to promote and protect all human rights.

HRW

Human Rights Watch is a non-profit, nongovernmental human rights organization made up of roughly 400 staff members around the globe. Its staff consists of human rights professionals including country experts, lawyers, journalists, and academics of diverse backgrounds and nationalities. Established in 1978, Human Rights Watch is

known for its accurate fact-finding, impartial reporting, effective use of media, and targeted advocacy, often in partnership with local human rights groups. Each year, Human Rights Watch publishes more than 100 reports and briefings on human rights conditions in some 90 countries, generating extensive coverage in local and international media.

Amnesty International

Since the organisation began in 1961, Amnesty activists have been ready to spring into action at any time for people facing imminent danger in detention. The organisation has set 10 aims concerning the conditions in prison, in which they want to guarantee the human rights of prisoners.

UN Working Group on Arbitrary Detention

The Working Group on Arbitrary Detention was established in 1991 by the former Commission on Human Rights, to investigate cases of arbitrary detention. The Group was involved in the Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, which was published in February 2010.

UN Committee Against Torture

Made up of ten independent experts, the UN Committee Against Torture monitors the implementation of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment by states that are signatories to the Convention. States that are signatories are obliged to submit regular reports to the Committee on how rights are being implemented. Under Article 20 of the Convention, the Committee is empowered to carry out a confidential inquiry if it receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in a state that is a signatory to the Convention. Individuals a nd third parties acting on their behalf can also bring complaints to the Committee if their own rights under the Convention have been violated.

Timeline of Events

1726 John Howard, a Christian activist who fought for prison reform, is born. He inspected jails in order to ensure that prisoners received humane treatment.

1789 Declaration of the Rights of Man and the Citizen is adopted during the early stage of the French Revolution.

1891 Federal Prison System is established.

1991 The Criminal Justice Act introduces the concept of "Probation Service" for all prisoners that serve a sentence that is longer than 12 months.

2001 In response to the terrorist attacks of September 11th, the U.S. Congress ratifies the Patriot Act reducing the rights and freedoms of many Americans.

2002 Administration of the American president George W. Bush forms the famous Guantanamo Bay detention camp, which holds many war suspects from war in Afghanistan, Iraq and 9/11 terrorist incident.

2004 Press reports describe the U.S. torture of Iraqi prisoners at Abu Ghraib Prison during and after the 2003 Iraq War.

2012 Release important report 'Global Conditions in Prisons and Other Detention Facilities'.

2016 BBC Panorama exposes evidence of children and young people being hurt and threatened by custody officers in England.

2016 A North Carolina man who spent 28 years in prison on murder charges is released after a judge ruled his trial was unfair.

Previous Attempts to solve the issue

Improving the conditions in the prisons and eradicating faults in the legal system is not something that can be solved in one attempt. Throughout the years, non-governmental organisations and other bodies have taken a lot of steps to ensure the Human Rights of all prisoners.

In 2012, a comprehensive package of 15 key HIV interventions for prisoners was put forward by the United Nations Office on Drugs and Crime (UNODC) and includes: HIV testing and counselling, treatment, care and support, information, education and communication, harm reduction and condom programmes. HIV is a big problem in prisons and prevention and tests are a way to decrease the amount of HIV patients in prison.

This year, Amnesty International has published a video that gives an insight in the horrors of Syria's torture prison Sednaya. Together with people that survived their sentence in Sednaya, Amnesty International recreated the prison's architecture, sounds and conditions. By doing this, Amnesty hopes to raise awareness of the

horrific conditions in prison such as Sednaya. At the end of the video, Amnesty asks the watcher to sign the petition to make a change. Videos such as these are made every day to raise awareness for inmates under bad conditions and by doing this, NGO's force authorities to do something about it.

In addition, more and more schools have set up programs to teach students about the Basic Human Rights that they have. In this way, the younger generation is prepared to recognize a situation wherein Basic Human Rights are violated. This will make sure that the new generation will be able to stand up for their own rights and those of others. By doing this, situations wherein rights are violated, such as in prisons, will be discussed and in this way changes can be made.

A lot of developing countries have a lack of lawyers, such as Liberia and Sierra Leone. To do something about this, organs like the International Growth Centre have set up projects to investigate the effectiveness of two new, relatively untested initiatives to strengthen legal institutions in developing countries. Projects like these help provide pro-bono legal services for individuals with limited access to formal justice systems, to ensure that every individual gets a fair trial. It encourages the country's population to become a lawyer, it sends lawyers from western countries and gives training to individuals with limited access to a formal justice system.

Possible Solutions

The most obvious example of an integrated strategy is the combination of legislative and practical measures to reduce imprisonment rates and overcrowding in prisons, with training and capacity building in prison management to improve conditions and services in prisons. Other elements that could complement such activities would be technical assistance to improve access to justice for the poor and vulnerable, to ensure the fair treatment of disadvantaged groups in the criminal justice system, while also preventing overcrowding in prisons, as well as crime prevention measures which can reduce offending and re-offending.

Moreover, training programmes could be set up for judges and prosecutors. Crime prevention measures in the community could be expanded to include post-release support to former prisoners, to assist them with their social reintegration, thereby reducing their risk of relapsing.

Furthermore, to lessen the amount of tension in prison caused by overcrowding, prisons are creating programs to increase the amount of mandatory activities for every inmate. Increased prisoner activity in education, sports, spiritual activities and exercise provides a healthy outlet for inmates wherein they can release their tension.

In this way, the amount of violence within prison walls is decreased and the conditions for prisoners are better.

In addition, a reason for the sometimes horrific conditions in prisons is the financing. Not all prisons receive the amount of money that they need to ensure good conditions in their prison. Setting up a charity or receiving money from the World Bank to purchase beds, mattresses, mosquito nets, fans, kitchen equipment and books for education would both enhance the prison's conditions and decrease the chance of the prisoners coming back.

Other ways of improving the conditions in prison are providing the prison staff with training on human rights and incorporating modules in training school curriculum for entrants and managers, enhancing the technical assistance in prison to update prison law rules and regulations or developing alternatives to short prison sentences to decrease the amount of prisoners. Juvenile justice reform programmes often have components focusing on alternatives for imprisonment and treatment of children in detention, which can be expanded to include adults, especially vulnerable groups.

Useful documents

The human rights of prisoners set up by the United Nations
http://www.ohchr.org/Documents/Publications/training11Add3en.pdf

Amnesty International's point of view on the subject
https://www.amnesty.org/en/what-we-do/detention/

Center for human rights and global justice
http://chrgj.org/

Joint Study on Global Practices in Relation to Secret Detention in the Context of Counter-Terrorism
http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf

Report on secret detention and the right to information
http://www.right2info.org/resources/publications/national-security-page/national-security-expert-papers/secret-detention-and-the-right-to-information-jonathan-hafetz

UNODC on prison reform
https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html