

HISAR SCHOOL

JUNIOR MODEL UNITED NATIONS 2021

“Combating Polarization in Times of Global Crisis”

Human Rights Council (HRC)

Protecting the Human Rights of Prison Inmates During Crises

Demir Alp



RESEARCH
REPORT



Forum: Human Rights Council (HRC)

Issue: Protecting the Human Rights of Prison Inmates During Crises

Student Officer: Demir Alp - Vice President

Introduction

The very foundations of humanity are all put to test in times of crises. These crises serve to unearth all the parts within society that are dysfunctional. The human rights of inmates, and the prison system are concordantly tested by various crises. In these times of disarray it is important to see how the prison system and the concept of human rights fail. Even though under the light of human rights, incarceration should be a last resort, today, imprisonment is more like an automated ruling. The system today is straying more and more from the ideal, and the COVID-19 Pandemic, a worldwide crisis, has brought to attention the dysfunctionality of these very systems.

Definition of Key Terms

Human Rights and Prisoners

All human rights must be unalienable to their subjects. Per Article 30 of the Universal Declaration of Human Rights (UDHR), “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”⁹ This definition of inalienable rights, innately include inmates even though they are in custody, hence depriving them of liberty. However the later adopted International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) brought some clarity to this apparent incongruity. According to Article 10 of the ICCPR, “all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person”. However, in this case what is human dignity? Human dignity is mentioned 5 times in the UDHR, while two of these are in the introductory section. In the very declaration Article 1 establishes that all humans are born free and equal in *dignity* and rights. This phrase leaves the notion of dignity significantly vague, and up for interpretation. However further on Articles 22 and 23 invoke the notion of dignity in reference to social rights and decent living conditions.¹

Health Rights of Inmates

This right focuses on the conservation of health, both physical and mental. In prisons this right is especially important in prisons, especially in times of crisis. To accomplish this prisoners need to be given medical examination at the time of their arrival and the necessary medical treatment should be provided free of charge, and all prisoners should have the right to request a second medical opinion. All decisions regarding the health of the prisoner shall only be taken by medically qualified people, solely in consideration of medicine and health. Persons with certain illnesses, should be transferred to civil

hospitals and specialist prison hospitals. No sick prisoner should be treated in the prison. The right to health also includes the insurance of sanitary, clean, and medically adequate, or “decent” living conditions.¹

Decent Living Conditions

In accordance with Articles 22, and 23 of the UDHR, the ICESCR further adds onto the parameters of decent living conditions through Article 16, “right to the highest attainable standard of physical and mental health”. Under the umbrella of these articles, the problem of decent living conditions can be investigated under three wings.

Accommodation

Inmates spend a considerable amount of time in specific locations of their prisons, mostly for extended periods of time. This makes it crucial for the standards of accommodation to be met. The vital aspects of these conditions can be summarized as follows: Adequacy of air(in cubic content), floor space, heating, sufficient lighting, ventilation as well as sleeping accommodation.¹

Right to Adequate Food and Drinking Water

This is to conserve the health and human conditions of prisoners. According to this principle prisoners must have an “adequate” amount of food at specific hours and drinking water available all throughout the day. The adequate here in no means is the “minimum package of calories, proteins, and other specific nutrients.”² According to the Committee on Economic, Social and Cultural Rights, *“the right to adequate food implies: (a) the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; (b) the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.”*²

Right to Clothing and Bedding

Clothing and bedding are two aspects of human life that help conserve the human condition in terms of dignity and respect. In prisons there should be access to “suitable clothing”, concordantly, every prisoner must be provided with a separate bed, and clean bedding. Specific places in the facility dedicated to the cleaning, drying, and conservation of clothing articles, and bedding is integral to this right.³

General Overview

The case of human rights in prisons during crises is incredibly vital. These crises and notable breakdowns of the prison system happened in many different ways, due to overcrowding of prisons, health crises etc.

Firstly let’s consider the overcrowding crisis. There are several risks and contributing factors that come with overcrowding of prison facilities which slowly turn into a crisis. The first is over-allocation of healthcare resources, decreasing the overall quality of health care. When considering the density of the

population in prisons, this issue becomes that much more important. At times of outbreak, as will be discussed further on, this can lead to a total breakdown of the prison system. Overcrowding also inevitably leads to increased gang activity, social divide, and consequently violence. Not only does this overcrowding result in a collapse of decent living conditions, it sows the seeds for many other imminent crises.

Overcrowding has been present in countries like the US for more than 50 decades. With the problems that come with overcrowding such as, poor nutrition, insufficient health care, as well as the pre-existing continued drug use and unsafe injection practices, or unprotected sex/tattooing in prisons, these facilities have become incredibly vulnerable to epidemics and pandemics, such as the HIV/AIDS crisis of the 80s. Many European prisons report many times the HIV infection rate of the general populace. In some prisons the rate of infection even reaches from 10% to 90% (some Estonian prisons). This shows just how much the “dignity” of prisoners haven’t been conserved as most of the facilities fail to ensure adequate living conditions and healthcare rights.

The density of prison populations is not just a matter of detainment, but of health, and prison systems need to be reformed in light of this. During the COVID-19 Pandemic, examples from all over the world emerged as an emphasis of the apparent failures of prison systems. For example in the Marion Correctional Institute in Marion County, Ohio, 78% of all inmates were COVID-19 positive. All of these health crises serve to emphasize the actual crisis in prison populations such as overcrowding. On top of that, these times of global tension result in increased corporal punishment by prison workers. This can be clearly observed in the case of the United Kingdom.

Another crisis to consider would be economic crises such as the 2008 Economic Recession. The first effect of the recession was an increase in crime. As families and individuals struggled in terms of money, more resorted to crime.¹¹ This is also in line with the criminal motivation theory. This inevitably leads to more prisoners, contributing to the overcrowding problem. However this was only a small portion of the problem. The greater issue caused by the economic recession was the cutting of funds and budgets by governments in order to save money. For example, the cuts in the United States resulted in increased instances of self-harm, violence, poor behavior, and drug use.¹² As a result it is evident that times of crisis are also threats to the rights of prisoners and inmates, a portion of society that often goes overlooked.

Major Parties Involved and Their Views

The United States: The US has one of the highest incarceration rates amongst world countries. It relies on incarceration more heavily than any other country. The prison system in the US is punitive as opposed to rehabilitation. There is no independent authority to monitor prison conditions, or any insurance of adequate living conditions, safety or health.⁵

The UK: In the United Kingdom in light of the COVID-19 Pandemic, use of violence and force has increased 32.1% from ten years ago, with now a rate of 59.1 per 100 prisoners. Rates started increasing following the cuts to the resources and fundings of prisons starting in 2010⁶ The COVID-19 Pandemic served to unearth the flaws of the UK prison system as a whole.

Russia: The rights of inmates in Russian prisons has been a problem for a long time. For example in 2018, 24 cases of torture were surfaced by the press. Official statistics also suggest torture being practiced regularly. Moreover during the COVID-19 Pandemic, Russia canceled its annual prison amnesty, which meant keeping 230,000 people longer in prison facilities. Many prisons in the Soviet Union don't have access to qualified health professionals.

Norway: Norway not only has one of the lowest crime rates in the world, it also has the lowest incarceration rate and the lowest recidivism rate (the tendency of criminals in a country to reoffend). Norway's prisons highlight normalcy, most don't even have bars and some prisons even include recording studios, woodworking programs etc. Most prisoners and guards maintain a friendly relationship and incarceration is focused on rehabilitation. Halden is one of the best prisons in Norway, and is a great example of how a prison can conserve the human condition and dignity. We see how successful this system is when considering its incarceration and recidivism rates. ([see pictures of Halden](#))

Timeline of Events

December 10, 1948	<i>The Human Rights Declaration was published</i>
1955	<i>Standard Minimum Rules for the Protection of Prisoners was adopted by the United Nations Un Congress on the Prevention of Crime and the Treatment of Offenders</i>
1997	<i>The Standard Minimum Rules for the Protection of Prisoners' reach was extended to protect the rights of those detained without charge</i>
1984	<i>Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted</i>
1987	<i>The Council of Europe delineated the European Prison Rules</i>
1988	<i>The UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment was adopted</i>
February 1989	<i>The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was put to force</i>
1990	<i>The Basic Principles for the Treatment of Prisoners was adopted</i>

Treaties and Events

Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules) (1955,1957, 1977, 2015): This is a treaty exploring the rights of humans under detainment. It is 36 pages, each page sets the foundations for an acceptable prison. Reading this document will help you with your resolutions.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984/1987): This is a set of rules aiming to protect prisoners from any form of physical or mental unjust and unwarranted punishment, such as torture, degrading treatment, etc. Articles 4-9 are important as they set the grounds for criminal punishment of individuals who torture prisoners. Aside from that Articles 21 and 24 are important when considering previous solutions to this issue. It will be important to read the entire document in order to fully understand these Articles.

UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles, 1988): This treaty is very similar to the Mandela Rules, yet it expands on the case of Detention, custody and arrest. Principles 9, 10, 12, 13, 14, 16, 17, 36 and 37 expand on the case of arrest. Principles 12, 16, 31 and 37 talk about custody. Almost all principles talk about the case of detention.

European Prison Rules (1987): This document, similarly to the Mandela Rules, outlines the rules for imprisonment in order to conserve human rights. The first chapter provides the set of rules while chapters 2 and 3 focus on possible reforms and other commentaries. Reading chapter 1 will benefit in the understanding of this issue as a whole.

Evaluation of Previous Attempts to Resolve the Issue

Human rights can be divided into three generations. And some rights from these generations require negative action (those rights that cannot be separated from their subject and only necessitate their subject can be exercised if the relevant public power steps back), however some of these rights require affirmative action. For these rights to be ensured, the relevant public power needs to provide them. With non-binding treaties and declarations like the above only serve to delineate the ground rules, ones that require negative action. However, human rights are all integral and when separated the whole system collapses, the case of rights that require affirmative action need to be considered.

All the treaties above, while not actively providing a solution to the issue, outline a starting point. Furthermore, non-governmental organizations such as PRI (Penal Reform International) work to make the criminal justice system “fair and effective.” PRI attempts to resolve the issue through consultation and “agenda-setting”, however both of these as discussed above show no signs of positive action. As a result all of PRI’s impact is at the mercy of governments, think of alternative solutions to this issue that act instead of suggest.

Another example would be the CSJ (Center for Social Justice). The CSJ offers free legal aid to prisoners in order to help ensure all have access to the necessary resources for a fair trial. Yet helping bailable offenders under trial leave bail does not solve the integral issues in the prison system. Try a different approach, possibly a reform to the system itself, while considering incentives. An exemplar to consider is Norway's prison system.

Possible Solutions

All of the mentioned above, such as the Standard Minimum Rules for the Protection of Prisoners, have served to lay the foundation of human rights in prisons. Yet the attempt to solve these comes from overcrowding. Yes, building new prisons and funding does help, however, this does not provide a sustainable solution. This would increase monetary expense for only a temporary answer. If the criminal system itself is not reformed, then incarceration rates will keep on increasing. Ways to solve this would be to shift the focus of incarceration to rehabilitation. The way this would manifest itself would be through implementing effective social integration programs focusing on "education, vocational training, or other work programs"¹³. Constant imprisoning is not a sustainable solution. Individuals need to be integrated back into society, otherwise, it is likely that they will commit crimes again, essentially being sent back into prison. This rehabilitative approach works on equipping inmates with the necessary skills to live a life excreted from crime. This system recognizes that inmates will be sent back into the world, and just this mentality change alone can help with overcrowding and high recidivism rates. Consider ways to do this, while looking at examples of Norway, Sweden, and the Netherlands. Furthermore, consider ways to ensure that prisoners are living in decent conditions that conserve their human rights. This could be accomplished through the forming of a body of supervision. Other than that an integrative approach to the judicial system could help decrease overcrowding and improve human rights. A key contributor to the issue at hand is the justice system. Ideally, imprisonment should be a last resort, yet this is not the case. A time where crime rates are increasing when more and more people are being sent to prisons calls for significant change to the world's judicial system. For example, as a starting point, a large portion of inmates are substance abusers. This brings the possibility of programs for counseling and treatment for substance dependency, instead of incarceration in order to alleviate the overcrowding in prisons. A possible reform should include "criminal justice institutions other than the prison service"¹⁴. Consider things like judiciary prosecution and police service. An approach could be crime prevention. However on its own, this is not sufficient, new sentencing policies are crucial in order to improve prisoner rights. Overall, a key point to consider in possible solutions is sustainability and effectiveness.

Bibliography

¹ "Human Rights and Prisons - OHCHR."

<https://www.ohchr.org/documents/publications/training11en.pdf>.

² Official Records of the Economic and Social Council, 2000, Supplement No. 2 and corrigendum (E/2000/22 and Corr.1), annex V.

³ United Nations Congress on the Prevention of Crime and the Treatment of Offenders., & United Nations. (1958). Standard minimum rules for the treatment of prisoners and related recommendations. New York: United Nations, Dept.

⁴ "FOIA.gov - Freedom of Information Act." <https://www.foia.gov/>.

⁵ "Prisoners' Rights | American Civil Liberties Union." <https://www.aclu.org/issues/prisoners-rights>.

⁶ "Prisons | The Institute for Government."

<https://www.instituteforgovernment.org.uk/publication/performance-tracker-2019/prisons>.

⁷ Reyes, H. (2001, December 01). Health and human rights in prisons. Retrieved January 10, 2021, from <https://www.icrc.org/en/doc/resources/documents/misc/59n8yx.htm>

⁸ "The United Nations Standard Minimum Rules for the"

https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

⁹ "UDHR, with Introduction by Rabbi Gilah Langner - T'ruah."

<https://www.truah.org/wp-content/uploads/2016/12/udhr-langner-intro.pdf>.

¹⁰ "The Impact of the Global Economic Recession on the"

<http://www.sascv.org/ijcjs/pdfs/McFarlaneijcjs2012iindissue.pdf>.

¹¹ "Economic crises may trigger rise in crime."

<https://www.unodc.org/unodc/en/frontpage/2012/February/economic-crises-can-trigger-rise-in-crime.html>

¹² "Prisons | The Institute for Government."

<https://www.instituteforgovernment.org.uk/publication/performance-tracker-2019/prisons>.

¹³ "Prisoner Rehabilitation Doha Declaration Global Programme...."

<https://www.unodc.org/dohadeclaration/en/topics/prisoner-rehabilitation.html>.

¹⁴ "Prison Reform and Alternatives to Imprisonment."

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