

Forum: Social, Humanitarian and Cultural Committee (GA3)

Issue: Achieving prison reform and alternatives to imprisonment

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INTRODUCTION

Prisons usually have four main goals: first, retribution which means the individuals who commit crimes against society are punished so that those who are affected by these crimes and their families can experience a sense of justice and retribution; second, incapacitation which means that by depriving the criminals of their freedom, the society is in principle protected from the perpetration of crimes. By that means, the criminals can no longer harm the society; third, deterrence which means that the threat and fear of imprisonment would be so high that potential criminals would back down from committing any crimes, and finally, rehabilitation which refers to the idea that imprisonment can also be an opportunity for rehabilitation and reintegration of criminals to society.

Very few prisons around the world, however, can reach these goals. With the exception of the homicide rate in some parts of the world, the crime rate has not declined significantly; the rate of incarceration around the world, in contrast, especially in the US and China, is on the rise, and, many prisons are in poor condition and suffer from overcrowding as well as from lack of health systems, of social-reintegration programs, of inspection and support, and of human and economic resources. This shows the devastating effect of imprisonment as numerous prisons fail to meet the minimum required international standards and norms such as basic human rights, decent health services, and living conditions.

That is why human right considerations are one of the fundamental reasons behind the calls for prison reform. There is an urgent need to protect the basic human rights of prisoners (with the exception of the right to liberty), such as access to basic security and health care, the right to be treated with human dignity and respect, or the right to have sufficient living space. Human rights violations can also emerge during pre-trial detentions, where torture or mistreatment under custody are common, where those under custody lack access to fair trial, or legal counseling, and where easy criminalization of minor offences or sometimes even of basic rights (such as signing a petition or being gay) raise grave concerns. Hence, improving overall criminal justice system and the prison system around the world and bringing them in line with international human rights standards and norms is a global priority.

Prison reform is also necessary for fighting the poverty, as it is often the prisoners with low income and their families that end up being most affected by imprisonment. Once imprisoned, individuals and their families find themselves locked in a vicious cycle of unemployment and poverty. Unable to find any job opportunities when released, often because of stigmatization and marginalization, ex-convicts repeat in many instances the criminal action. This maximum likelihood of recidivism (the tendency to repeat the same crime) underscores the need for facilitating reintegration of the released prisoners (after serving their sentence) into the socio-economic platforms in order to prevent poverty and marginalization.

Furthermore, prison reforms are necessary because poor living conditions in prisons tend to create significant public health concerns. Overcrowded prisons are often breeding grounds for infectious diseases such as HIV/AIDS and tuberculosis (TB) whereas drug use and addiction are very common. Incarceration and isolation also create mental problems. Underfunded and understaffed health care services in prisons also explain high rates of morbidity and mortality. Once released, the prisoners may transmit those illnesses and health problems to other people. Apart from health issues, imprisonment is detrimental to the overall social fabric of society. Once incarcerated, these individuals and their families often lose their contact with their community and relatives. Mass incarcerations exacerbate these problems with incalculable social cost.

Finally, apart from health threats and social cost considerations, prison reforms are also necessary because prisons are economically inefficient and very costly. Significant funds need to be allocated for opening and maintaining prisons and related health care services. Especially in developing countries where such resources are limited, valuable resources that could have been spent on social protection projects, on preventive health care or for educational purposes (which in effect would have better addressed the fundamental causes of crime) are allocated for building and running prisons.

Even though prison reform and alternatives to imprisonment are intertwined concepts, they should be handled separately. Prison reform is a broader topic, which includes aims to improve prison conditions and implement alternatives to imprisonment. Prison reform generally aims at the wellbeing of the prisoners while alternatives to imprisonment, as its name suggests, presuppose the infliction of more efficient punishments than incarceration. Alternatives to imprisonment suggest that the focus shifts from “punishment and isolation” to “restorative justice” (which involves bringing the offenders and victims together with the help of third parties in order to effectuate community healing) and “social re-integration”, which emphasizes the rehabilitation of the prisoner and facilitating his/her transition back into the community. The non-custodial sanctions, which refer to fines, release under probation, and/or compulsory community services are some alternatives to confinement. The ultimate aim of prison reform programs, including such alternatives to prison, is to reach UN standards and

norms regarding protection of human rights in prisons and diminution of negative impacts of imprisonment.

DEFINITION OF KEY-TERMS

Recidivism/ Reoffending

Recidivism is the tendency for a previously convicted individual to repeat a criminal or illegal action. It is closely related with the concept of imprisonment since recidivism is very common amongst individuals who have previously served a prison sentence. It is a negative consequence of imprisonment since a previous crime is repeated.

Prison Reform

Prison reform is the attempt of improving prison conditions and the wellbeing of prisoners. It focuses on implementing alternatives to imprisonment and aims at developing an efficient legal system. Furthermore, the prison reform also aims to reinstate individuals after incarceration.

Pre-trial detention

This concept is widespread in many countries. It is the process in which an individual (the suspect) is held and questioned by the police prior to being accused of an offense. However, at this stage suspects are vulnerable to human rights abuses during the criminal justice process. Even though any "individual is presumed innocent until found guilty", conditions in pre-trial detentions are usually much worse than in prisons. Therefore, safeguarding suspects, preventing human rights abuses and ill-treatment are significant to achieve efficient pre-trial detention.

Restorative justice

Restorative justice is a form of justice which aims to reduce recidivism. It brings together the offenders and victims accompanied by a third-party community. It helps to rehabilitate both the offender and the victim from the negative experience enabling the community to respond to the needs of both the offender and victim thus contributing to overall social welfare.

BACKGROUND INFORMATION

According to the latest edition of the World Prison Population List (WPPL), more than 10.35 million people are held in penal institutions throughout the world. If the numbers reported to be held in detention centers in China and in prison camps in North Korea are added, the total may go as high as 11 million.¹ According to the 2019 Global Prison Trends Report of Penal Reform International (PRI) there has been a 20% increase in the number of prisoners around the world between 2002 and 2015.²

As of 2019, there are more than 2.2 million prisoners in the United States of America, more than 1.65 million in China (plus an unknown number in pre-trial detention or 'administrative detention'), 640,000 in the Russian Federation, 607,000 in Brazil, 418,000 in India, 311,000 in Thailand, 255,000 in Mexico and 260,000 in Turkey and 225,000 in Iran. All of this suggests that almost half of the world's prison population is located in five countries (US, China, Russia, Brazil and India).

Clearly these countries are the most populous, which partially explains the high number of prisoners, but US also ranks very high when prison population rate—that is, the number of prisoners per 100,000 of the national population—is taken into account. The highest rate exists in the Seychelles (799 per 100,000), followed by the United States (698), St. Kitts & Nevis (607), Turkmenistan (583), the U.S. Virgin Islands (542), Cuba (510), El Salvador (492), Guam – U.S.A. (469), Thailand (461), Belize (449), the Russian Federation (445), Rwanda (434) and the British Virgin Islands (425).³ The global average imprisonment rate is about 144 prisoners per 100,000, which is already very high.

These numbers clearly suggest that there is a global prison system in severe crisis, as imprisonment has become the first response rather than last resort and prisons are not places where people get rehabilitated and reintegrated into society but places where individuals are "locked away" and almost rendered invisible. There are several dimensions to this crisis of the prison system. Some are directly related to problems of the existing prison system, such as overcrowding, poor health and living standards in prisons, lack of social integration and rehabilitation programs, whereas others are linked to larger issues such as chronic poverty and absence of basic social

¹ http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf

² https://cdn.penalreform.org/wp-content/uploads/2019/05/PRI-Global-prison-trends-report-2019_WEB.pdf

³ http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf

services, failure of the entire criminal justice system, as well as racism and stigmatization.

Challenges regarding the current prison systems

Overcrowding

One of the major problems in prisons is that they are extremely crowded. Data from ICPR (Institute for Criminal Policy Research) shows that in more than 120 countries, the number of prisoners exceeded the official prison capacity. (The most extreme example is the Philippines where prisons are operating at more than 463% over capacity.) The overcrowding issue leads to a massive chain reaction, very poor living conditions (where prisoners even have to take shifts in sleeping because of lack of sufficient beds), severe health issues, infections, as well as violence. Lack of good drinking water and nutrition, poor sanitation, lack of natural light and fresh air are already characteristic features of many prisons worldwide. Lack of adequate space, which should be a minimum 6 square meters per prisoner according to international norms, exacerbates all these problems.

Poor health services and health conditions

The Nelson Mandela Rules and UN Bangkok Rules call for the provision of basic healthcare services for prisoners, which include the transfer to civil hospitals for specialist treatment when necessary. Yet, many prisoners receive healthcare that is far more inferior in terms of overall standards in comparison to the services available outside prison, if they were to receive treatment at all.

Most often, the health needs of prisoners are ignored or neglected, and others may develop health problems while in prison as a result of unhealthy and unhygienic prison conditions and poor control of infectious diseases. Prisons can indeed be a breeding ground for HIV/AIDS, tuberculosis (TB) and other infectious diseases. The incidence of TB and the rates of HIV infection are much higher in prisons than outside. That is mostly due to high rates of drug dependency, needle sharing, tattooing and piercing, unprotected sex (whether consensual or rape), and poor standards of medical hygiene in prisons.

Drug dependency in prisons is also widespread. Addressing the needs of prisoners with drug problems is a critical challenge for successful rehabilitation, in terms of both public health and preventing reoffending. Unfortunately, returning to drug use on release is a common problem. Prison populations also have a disproportionately high rate of people with mental health or behavioral problems, many predating prison and others developing or worsening when inside due to poor conditions and lack of mental healthcare.

Overrepresented and/or vulnerable groups in prisons: Women, children, ethnic and racial minorities, foreign nationals, LGBTI people

Though the overall percentage of women prisoners is low (approximately 6.9% of the overall world prison population), the number of women in prison increased by 53% between 2002-2017. Prison conditions are not organized to address the special needs of women, and gender-sensitive treatment is extremely rare. Women also have particular health needs, which go far beyond their need for reproductive healthcare and pre- and postnatal healthcare. Women in prison are disproportionately likely to be victims of domestic or sexual abuse, to experience poor mental health, and to have alcohol and drug dependency problems. 80% of women prisoners also suffer from some sort of mental illness.⁴

Furthermore, women also either lose custody of their children or children grow up in prisons, which create serious health issues. Meanwhile, most children are tried in adult courts. According to a recent global estimate by UNICEF, as many as 1,5 million children were held in detention worldwide and 1,1 million children were held in pre-trial detention.

Indigenous people, racial and ethnic minorities, LGBTI people (lesbian, gay, bisexual, transgender, and intersex) as well as foreign nationals are disproportionately overrepresented in prisons and are often subject to the worst form of discrimination and stigmatization. For example, foreign nationals represent 87% of all prisoners in the United Arab Emirates, while in Europe, foreign nationals make up 21% of the prison population on average.⁵ Indigenous people are overrepresented in Canada and Australia. In the US, while the people of color represent 13% of the overall population, they constitute 40% of prison population.⁶ Meanwhile, LGBTI people are often easily criminalized (same sex activity is still illegal in 73 countries across Middle East, Asia and Africa and is punishable by death penalty in several countries) and, according to the UN Subcommittee on the Prevention of Torture, they are particularly subject to violence from other inmates, prison staff and even from health care providers.

Mistreatment in prisons and management problems

Another major problem in prisons is the absence of regular oversight and inspection mechanisms when it comes to overall prison management and treatment of prisoners. The existing mechanisms are often not independent, which makes it very difficult to identify and document torture and ill treatment in prisons and detention centers. Torture, degrading treatment of prisoners, and solitary confinement, which is

⁴ <https://www.penalreform.org/priorities/women-in-the-criminal-justice-system/key-facts/>

⁵ https://cdn.penalreform.org/wp-content/uploads/2019/05/PRI-Global-prison-trends-report-2019_WEB.pdf p.23.

⁶ US bureau of Justice Statistics <https://www.bjs.gov/content/pub/pdf/p15.pdf>

proven to be very harmful to mental health, are unfortunately quite widely used around the world. Lack of resources, shortage of funds, and staff shortages also create serious tensions in prisons, increasing tensions and risks of violence. It is not surprising, for instance, that the prison suicides among men are at least three times higher than in the rest of the male population.⁷ Lack of accountability and insufficient training of the prison staff raise serious concerns in terms of basic human rights violations.

Key reasons leading to the crisis of global prison systems

Failure of the criminal justice system

One of the fundamental reasons behind the crisis of the prison system is the problem associated with the overall criminal justice systems, especially in the developing countries. In most countries, access to fair trial and getting proper legal assistance for the poor and vulnerable groups are often very limited, which partly explains the overrepresentation of such groups in prisons. The frequent use of the prison system as a first response rather than as a refuge of last resort, which shows the absence of crime prevention strategies, also explains why prisons become overcrowded. For instance, instead of focusing on drug dependence treatment and psychological counseling programs for certain offenders, countries often find it easier to imprison all offenders, which increases the burden on prisons and lowers the prospects of genuine rehabilitation. The ease, with which certain offenses are easily criminalized, often without due process, shows how prison reforms cannot be separated from the reform of the entire criminal justice system.

This overcrowding problem is also largely due to long pre-detention periods, during which people are waiting for trial, with significant case overload problem in the courts, as well as highly bureaucratic and cumbersome criminal procedures. Such long delays in the completion of the criminal justice process become a punishment in itself. In many countries, detainees often do not have access to legal counsel and are not well informed of the procedures, which further worsen the issue. This excessive use of pre-detention (in some countries the number of people in pre-trial detention is higher than that of convicted prisoners and the conditions can be much worse) creates a potential for abuse and violations of human rights.

Poverty, racism, reoffending and lack of sufficient social protection

Imprisonment is heavily intertwined with poverty. Rates of imprisonment are higher in countries with high-income inequality (such as the US and Brazil) and high levels of poverty. Imprisonment disproportionately affects individuals and families living

⁷ <https://www.penalreform.org/blog/suicide-in-prison-a-new-study-on-risk/>

in poverty. When an income-generating member of the family is imprisoned, the rest of the family can suffer from serious income loss. In developing countries, where levels of social protection for the poor as well as upward social mobility opportunities (such as access to decent education and solid health care services) are limited, this poverty impact is even more visible.

Even worse, when the breadwinner family member is released, he/she is often faced with stigmatization and discrimination, and cannot find employment. This, in turn, creates a vicious cycle of poverty, marginalization, reoffending and reimprisonment, a problem known as recidivism.

MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED

UNODC (United Nations Office on Drugs and Crime)

UNODC via its field offices helps to improve member states prison conditions and assists the member states in meeting required UN standards. It designs numerous projects aiming to tackle current issues and tries to implement these in prisons. It also aims to strengthen compliance with law in member states by setting international norms and standards related to the management of prisons and prisoner conditions. Not only does the UNODC try to prevent human right violations of prisoners but it also strives for the implementation of efficient prison reform strategies.

WHO (World Health Organization)

According to the WHO, rates of infection and mortality in prisons are much higher in comparison to the general population. This is the primary concern of the WHO. That is why the WHO aims to promote widespread and quality healthcare in prisons. It aspires to ensure that all prisoners have an equal right and access to healthcare. The WHO also tries to establish better prison conditions for both, staff and prisoners. The WHO provides fundamental healthcare services and promotes wellbeing in prisons.

OHCHR (United Nations Human Rights, Office of the High Commissioner)

As the main UN office with a mandate to protect and promote human rights all around the world, OHCHR provides assistance to governments so as to implement international human right standards to the ground. Providing expertise and training in administration of justice, preventing tortures as well as unnecessary and prolonged detentions, ensuring that human rights of prisoners are protected, that prison managers and guards are given proper human right guidelines all constitute a crucial part of OHCHR's overall human rights mission.

PRI (Penal Reform International)

PRI is a non-governmental organization established in 1989 by a group of human rights activists. Throughout the years, it has worked closely with the UN, trying to implement resolutions regarding prison reform. It has worked in numerous countries such as Rwanda, Kenya, Kazakhstan, Uganda and Jordan. PRI is not only concerned about the prison conditions but it also tries to promote an impartial and efficient judicial process where fair and proportionate sentencing takes place.

ICPR (Institute for Criminal Policy Research), School of Law of Birbeck University of London

The ICPR undertakes academically grounded, policy-oriented research on criminal justice. It hosts and updates the *World Prison Brief*, which is an online database providing free access to prison systems around the world. This database is part of a larger *World Prison Research Programme* which involves collaboration with research partners, civil society organizations and policy makers, so as to inform and promote debate and policy reform.

TIMELINE OF EVENTS

DATE	DESCRIPTION OF EVENT
1815	The first "juvenile detention centers" were built. This brought changes in the prison system by establishing new centers to try to correct the behavior of juvenile delinquents.
1817	Elizabeth Fry became the first person to argue for prison reform. She suggested that the prison facilities for women should be separated from those for men.
1829	Eastern State Penitentiary was built in Philadelphia. The concept of solitary confinement was first introduced aiming to rehabilitate prisoners.

1835	First prison inspections were established and voluntary prison teachers were recruited in the UK.
1902	First reform school for juvenile delinquents was opened.
1955	In America state care for the mentally ill was reduced because of deinstitutionalization and closure of mental hospitals. As a result, the mentally ill were placed in prisons.
1980	The “warehousing model” was introduced. This approach suggested to abandon the idea of rehabilitation of the offenders and offered imprisonment without treatment.
1989	The PRI (Penal Reform International) was created by a group of human rights activists aspiring to improve prison conditions.
1995	The UN created an international handbook on correct prison practice called “Making Standards Work” which aimed to promote further implementation of internationally recognized prison rules.
2007	The PRI and UN, in coordination, implemented strategies for protecting pre-trial detainees and reducing overcrowding in prisons located in Central Asia, Rwanda, Burundi, and South Caucasus.
2010	“The Bangkok Rules,” which are rules created by the UN aiming to treat women prisoners and to impose non-custodial measures for women convicts, were adopted and implemented.
2015	“The Nelson Mandela Rules” were adopted by the UN. These rules were aimed at issues such as the protection of the human rights of prisoners, health and medical services in prisons, protection of vulnerable groups in prisons, training of staff and many more.

RELEVANT UN RESOLUTIONS, TREATIES AND EVENTS

UN Resolution E/RES/2004/35

Adopted in 2004, this resolution aims to prevent the spread of diseases such as HIV/AIDS in pre-trial and correctional facilities. This resolution requests the UNODC to work with the WHO in order to guide governments through policy making aimed at establishing international norms and standards in prison facilities.

UN Resolution E/RES/2006/25

Adopted in 2006, this resolution aims to develop a technical assistance program in Africa regarding prison management, penal reform and alternatives to imprisonment. It also calls upon the UNODC to develop further tools and manuals on the aforementioned topics.

UN Resolution E/RES/2007/24

Adopted in 2007, this resolution calls upon member states to facilitate access to legal aid in criminal justice systems for victims, suspects and defendants during critical stages in criminal cases.

UN “Bangkok Rules” 22 December 2010

The Bangkok Rules also called “Thee United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders” were adopted by the UN General Assembly and are composed of 70 separate rules aimed to improve treatment towards female prisoners.

UN “Nelson Mandela Rules” December 2015

The Nelson Mandela Rules were created to honor the legacy of Nelson Mandela, an important political figure who spent 27 years in prison. These rules are aimed at vulnerable groups in prison, staff members, medical and health services in prisons, investigation processes of deaths and torture in prisons, legal aid and the rights of prisoners. It also requests the UNODC to focus on improving prison management, supporting social reintegration processes, preventing recidivism and bettering prison conditions.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

According to the above, although the UN has passed numerous resolutions regarding the issue and many NGO's have contributed to the overall progress in improving prison conditions, unfortunately many of these plans were inoperative. However, some countries in Africa, such as Nigeria and Kenya, have managed to implement long-term solutions to reduce overcrowding in prisons. In Nigeria, the Presidential Advisory Committee was established in order to tackle these issues. The committee has managed to lower occupancy rates which was 136% before. Furthermore, the African Commission on Human Rights has issued guidelines encouraging states to decriminalize trivial offences in order to tackle prison overcrowding and reduce negative effects of imprisonment, such as poverty, marginalization and recidivism. In addition, PRI's Kenya project, which is a project created in line with the UN Bangkok Rules and aimed at implementing a gender-sensitive approach to non-custodial sentences, has also reached success. The PRI has created "Probation and Aftercare Services" along with developing gender-sensitive pre-trial processes. Moreover, some countries, such as Australia, Canada, and New Zealand, have created indigenous sentencing courts in order to prevent racial or ethnic bias that could influence impartial sentencing decisions. Lastly, the Brazilian Federal Supreme Court has recently decided that children under age 12 and pregnant mothers were to be placed under house arrest rather than pre-trial detention if they are accused of trivial offenses. This is a significant step in order to protect the human rights of vulnerable groups.

POSSIBLE SOLUTIONS

While discussing possible solutions, the most significant aspect is whether these solutions are applicable or not. As stated previously, there are numerous issues in current prison systems. To start off, one of the most prominent issue is overcrowding. In order to reduce overcrowdedness in prisons, the governments must reduce the number of imprisoned people. To achieve this, they should consider alternatives to imprisonment, reduce the length of confinement for petty offences or completely decriminalize them and introduce legislation favoring the prevention than the repression. Furthermore, policymakers should promote restorative justice as it is evidently more efficient and contributes to the wellbeing of both the victim and the offender as well as of the community as a whole. As for coping with human rights abuses during pre-trial detention, governments should take action to improve conditions and shorten pre-detention time by expediting legal processes. Moreover, the governments should enable access to legal aid during pre-detention periods. Governments should also conduct prison policy in full compliance with the Bangkok Rules. Another significant aspect concerns the transparent and equal jurisdiction. In order to achieve this goal, states should take action to eliminate gender, racial and ethical bias. They should revise

policies and get rid of discrimination throughout the whole legislation process. States could implement similar measures as Australia, Canada, and New Zealand who have created separate courts for indigenous minorities. Furthermore, states should take in consideration the rights of vulnerable groups by ensuring their safety and promoting healthcare. If the states are unable to accomplish any of these they should adopt early release mechanisms or implement house arrest as a punishment for petty offenses conducted by vulnerable groups. The staff of prisons is also very important. Staff members should be selected carefully and properly trained. This selection process should be inspected by a third-party non-governmental organization. Lastly, the prisoners' contact with the outside world should not be over-restricted since it is crucial for rehabilitation and reintegration.

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