



The Commission on Crime Prevention and Criminal Justice (CCPCJ)

MUNUC 33

Online



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CHAIR LETTER

Dear Delegates,

Welcome to the Commission on Crime Prevention and Criminal Justice! My name is Lucia Geng, and I'll be serving as your committee chair. I previously chaired CCPCJ during MUNUC 31, so returning to this committee is a privilege and a delight. I'm very much looking forward to meeting you all, and to working with you at conference!

A little bit more about me besides MUNUC stuff: I am an undergraduate in the class of 2022 at the University of Chicago majoring in Political Science and minoring in Arabic and Human Rights. I grew up in Great Neck, New York, a suburban town best known as the inspiration for West Egg in F. Scott Fitzgerald's *The Great Gatsby*. At UChicago, I participate in the Bridge Writing Workshop, where I facilitate creative writing workshops at IYC-St. Charles, an Illinois youth prison. In my free time, I enjoy having dance parties in my bedroom to Arcade Fire songs, consuming hot takes about Nathan For You, and attempting to grow scallions in my kitchen.

As delegates to the CCPCJ, you're going to be tackling a challenging issue that many people with power are reluctant to discuss or effect serious change to: the subject of prisoner rights. I picked this topic for committee because it's one that I hold near and dear to my heart — I've reported on criminal justice issues for various publications, worked to improve prison conditions as an intern with the ACLU's National Prison Project, and as mentioned previously, I currently facilitate writing workshops for incarcerated youth in Illinois. I got interested in this field after slowly becoming horrified with how, for the most part, people in the outside world are so quick and willing and eager to forget and ignore people behind bars. And I think the outside world's willingness to remain quiet about the "lock them up and throw away the key" mentality that pervades the prison systems of so many countries around the globe is truly troubling. Just because there are injustices occurring in prisons out of our sights does not mean that we should put those thoughts out of our minds.

Proportionally speaking, you'll notice that there's a large amount of content in this background guide that focuses on the United States. Because the issue of prisoner rights typically doesn't get too much media coverage and is under-discussed in general, the team behind this background guide chose to write with a slight emphasis on the United States so that our delegates (you!), most of whom are American, could draw connections between the international nature of prisoner rights in the context of Model United Nations and domestic happenings regarding prisoner rights in your metaphorical backyard. We wanted to stress that this is a topic that's deeply relevant to understanding American society more broadly, and we hope that you'll agree with us! (If not, well, we have all of conference to convince you otherwise.)

As you prepare for conference, please don't hesitate to contact me at luciageng@uchicago.edu with any questions or concerns you might have. I promise you that no question is too small or silly to ask; I'd be more than happy to answer any inquiries about the content in this background guide, the upcoming conference, or why Sokka is the best character in Avatar: The Last Airbender.

I can't wait to make MUNUC 33 an incredible experience for all of you. See you soon!

Warmly,
Lucia Geng

TOPIC: PRISONER RIGHTS

Statement of the Problem

Abstract

This section of the background guide includes a short introduction by which we understand the nature of criminality and punishment, and thus the prison as both a form of punishment and one of control. From there, this background guide will discuss the realities faced by prisoners around the world. These include the material conditions of prisons, the use of solitary confinement, the status of civil liberties in prisons, the realities of pre-trial justice, the groups especially at risk within prisons, and the harsh sentencing that many contend with. These are the main problem areas that those working within prisoner rights focus on.

Part 1: Understanding Prisoner Rights

Throughout the world, the umbrella of the criminal justice system extends throughout all facets of life, impacting not only those who are **incarcerated** and their families and communities, but also those with no direct contact. The nature of the criminal justice system is not only to control those who commit crimes, but to create conditions in which certain actions are considered criminal and illegal while others are not. This delineation results in how each society defines criminality, and thus, who is a criminal and who is not.

The criminal justice system not only defines criminality, but also creates a process in which punishment is passed out in the name of justice. The degree of punishment is determined by the judge, as the arm of the state, and depending on the law, certain criminal acts may result in a criminal being placed into prison or jail. The development of different legal systems around the world means that not all criminal justice systems look the same and that a person who commits the same crime in two countries would not face the same punishment.

Jurisprudence, or the philosophy of law, has seen debates throughout centuries of scholarship of what it means to be a criminal, and thus the very nature of what punishment and justice is. Prisons exist within this debate, and various prison systems take on different approaches on whether prisons serve to be “correctional” and “rehabilitative” facilities or places of separation. In any case, prisons are used as forms of control over a certain population.

In the United States, the opinion of the Supreme Court in the 2010 case *Brown v. Plata*, presented a clear view on the nature of prisons and the criminal justice system within the United States. The majority decision stated that

"As a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights. Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment."¹

In other words, regardless if one considers that criminals have broken any kind of social contract with larger society, criminals who are imprisoned, while having lost the right to liberty, are still guaranteed human rights. Being imprisoned is not a loss of that essential right. As prison populations have grown around the world, the debate of what a prisoner is owed has grown, as has a more careful look at the conditions which prisoners face in detention.

Thus the question of prisoner rights is essentially a question of human rights. Prisons, used as a form of control and as a form of punishment by the state, means that the lives of prisoners are placed in the hands of the state. Without proper oversight and protections, already vulnerable populations are exploited by state actors. In light of COVID-19, the urgency to protect the rights of those who are incarcerated in prisons and jails around the world only grows.

Part 2: Cruel, inhuman, and degrading conditions

As the world population has grown, so has the global prison population concurrently. The result: globally, prisoners face dangerous conditions due to overcrowding. In fact, 50 countries operate

¹ *Brown v. Plata*, 563 U. S. 493 (2011). Retrieved from: <https://www.supremecourt.gov/opinions/10pdf/09-1233.pdf>.

prison systems that operate more than 150 percent of their capacity.² Prison capacity has not grown concurrently with the prison population. This is not without mentioning that overcrowding was a serious issue before a worldwide pandemic that exacerbated the precarious position of prisoners. In the United States, the Supreme Court has characterized overcrowding in California prisons as a “cruel and unusual punishment” due to the fact that as prisons overflow, prisoners are often kept in cells for longer periods of time.³

One of the greatest implications of prison overcrowding results in dangerous conditions for physical and mental health. Before the COVID-19 pandemic, health systems in overcrowded prisons did not have adequate resources to address basic health problems faced by prisoners. Many prisoners come from marginalized groups who even outside prison face systemic inequalities in access to healthcare and have pre-existing medical conditions which make them more vulnerable to dangerous overcrowding conditions. The World Health Organization states that “rates of infection with tuberculosis, HIV and hepatitis are much higher than in the general population.”⁴ In overcrowded prisons, wait times to see health care professionals can be deadly.

Because social distancing is particularly difficult in prisons, both prisoners and prison staff have been hit hard by the COVID-19 pandemic. Worldwide, calls have been made for prisoners, many of whom are in prisons for pre-trial detention, to be released to ameliorate prison conditions. In South and Central America, where Haiti, Guatemala, and Bolivia are among the top five countries in the world with prison occupancy above 350%, prisons with poor ventilation, lack of physical distancing, and unsanitary practices, means that prisons can be 25% more likely to be infected with the novel coronavirus.⁵

² Penal Reform International. “Prison Overcrowding.” Accessed June 21, 2020.

<https://www.penalreform.org/issues/prison-conditions/key-facts/overcrowding/>.

³ Liptak, Adam. “Justices, 5-4, Tell California to Cut Prisoner Population.” *The New York Times*, May 23, 2011, sec. U.S.

<https://www.nytimes.com/2011/05/24/us/24scotus.html>.

⁴ “Health in Prisons, a WHO Guide to the Essentials in Prison Health,” n.d., 198.

https://www.euro.who.int/_data/assets/pdf_file/0009/99018/E90174.pdf

⁵ Human Rights Watch. “Latin America: Cut Prison Crowding to Fight COVID-19,” April 2, 2020.

<https://www.hrw.org/news/2020/04/02/latin-america-cut-prison-crowding-fight-covid-19>.

Part 3: Solitary confinement

There is no universally agreed upon definition of “**solitary confinement**.” Moreover, institutions often use a variety of terms to refer to the same thing, such as “segregation”, “isolation”, “lockdown”, “super-max”, or “secure housing unit” (SHU), making discussion of the concept and the creation of an exact definition even harder. However, “solitary confinement” and its synonyms are generally understood to refer to the physical isolation of individuals to their cells for 22 to 24 hours a day, and are allowed only minimal meaningful interaction with others.⁶

Whenever solitary confinement is used, prisons tend to frame their use of it as a last resort and as a treatment for exceptionally dangerous individuals, or the “worst of the worst.”⁷ This might occasionally be the case if solitary confinement is being used as a disciplinary practice to punish certain behavior.⁸ However, this is usually not the case: people can be put into solitary confinement for violent acts, but they can also end up in solitary confinement if a guard arbitrarily decides they belong there. Prisoners can be placed in solitary for violating a myriad of prison policies, such as possessing contraband, or having unpopular religious beliefs, or using profanity.⁹

States also try to justify their use of solitary confinement by saying that vulnerable prisoners may need to be protected, or that prisoners with mental illnesses must be kept away from other prisoners.¹⁰ However, the conditions of solitary confinement are extraordinarily harsh. Solitary confinement cells usually measure 6x9 feet or 8x10 feet.¹¹ To put that in perspective, that means solitary cells are smaller than the typical college dorm room and the typical bathroom found in a one-bathroom apartment. In fact, you could fit nearly 20 solitary confinement cells in a typical one-bedroom apartment.¹²

⁶ Penal Reform International. “Solitary Confinement.” Accessed June 21, 2020. <https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/>.

⁷ Solitary Watch. “FAQ,” January 31, 2012. <https://solitarywatch.org/facts/faq/>.

⁸ Penal Reform International. “Solitary Confinement.” Accessed June 21, 2020. <https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/>.

⁹ Solitary Watch. “FAQ,” January 31, 2012. <https://solitarywatch.org/facts/faq/>.

¹⁰ Penal Reform International. “Solitary Confinement.” Accessed June 21, 2020. <https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/>.

¹¹ Solitary Watch. “FAQ,” January 31, 2012. <https://solitarywatch.org/facts/faq/>.

¹² Lopez, German. “You Could Fit 19 Solitary Confinement Cells in a Typical 1-Bedroom Apartment.” Vox, June 11, 2015. <https://www.vox.com/2015/6/11/8765977/solitary-confinement-cells-small>.

The conditions of solitary confinement can prevent the rehabilitation of incarcerated people. For example, the Security Housing Unit of Pelican Bay State Prison in California consists of small cement cells made completely of gray concrete except for the sink and toilet. Prisoners in the SHU are only allowed 1.5 hours each day in a small concrete yard, and have no access to exercise equipment. They have no way to have meaningful human contact, and must deal with the constant noise of keys rattling, toilets flushing, and indiscriminate shouting by the other prisoners in cells near them.¹³ Under these circumstances, it is unclear how prisoners could emerge from solitary confinement in a better psychological state than they went in. It is for this reason—because the use of solitary confinement so often forecloses the possibility of a prisoner’s rehabilitation—that in 2011, the UN Special Rapporteur on Torture, Juan Mendez, recommended that prolonged or indefinite solitary confinement longer than 15 days should be banned. Mendez said that such practices could amount to torture.¹⁴ In addition, even a relatively brief stint in solitary confinement can lead to irreversible effects on people’s mental health. A 1951 study on sensory deprivation where researchers paid graduate students to stay in small chambers had to be halted after seven days, as nearly every student “lost the ability to think clearly about anything for any length of time.”¹⁵

Finally, the magnitude of the problem of prisons using solitary confinement is large. Exact statistics regarding the use of solitary confinement in the United States are difficult to come by, but currently available data suggests that at least 80,000 men, women, and children are held in some form of solitary confinement every day.¹⁶ In addition, since the start of the COVID-19 pandemic, more than 300,000 people in the US have reportedly been placed into solitary confinement (as of June 2020).¹⁷

Solitary confinement is not a problem that only affects incarcerated people in the United States. Although Spain’s policy of locking up prisoners convicted of very serious offenses in an eight-square-meter cell for 21 hours a day, this *technically* wouldn’t be considered solitary confinement by the

¹³ “At Pelican Bay Prison, a Life in Solitary : NPR.” Accessed June 21, 2020.

<https://www.npr.org/templates/story/story.php?storyId=5584254?storyId=5584254>.

¹⁴ UN News. “Solitary Confinement Should Be Banned in Most Cases, UN Expert Says,” October 18, 2011.

<https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>.

¹⁵ “What Does Solitary Confinement Do To Your Mind? | Last Days of Solitary | FRONTLINE | PBS | Official Site.”

Accessed June 21, 2020. <https://www.pbs.org/wgbh/frontline/article/what-does-solitary-confinement-do-to-your-mind/>.

¹⁶ Solitary Watch. “FAQ,” January 31, 2012. <https://solitarywatch.org/facts/faq/>.

¹⁷ “Solitary Confinement Is Never the Answer,” n.d., 16.

<https://static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860eod57doce8195/1592247570889/June2020Report.pdf>.

United Nations (since 21 hours of isolation a day is less than 22 hours of isolation a day), this practice can still cause long-term damaging effects to prisoners.¹⁸ In addition, in May 2018, the European Committee for the Prevention of Torture condemned Norway's practice of locking up people alone in their cells for 22 hours per day for prolonged periods.¹⁹

Prison systems around the world state different reasons for utilizing solitary confinement, some of which can arguably be considered more legitimate reasons than others. Some prison authorities state that solitary confinement can be used for a prisoner's own protection if they are under the threat of violence from other prisoners. Another reason given by prison authorities for the use of solitary confinement is that it may assist in the securing of a criminal investigation, so that the detained person's contact with witnesses is limited.²⁰

Part 4: Civil liberties in prison

According to international standards, prisoners are theoretically supposed to be entitled to a diverse array of **civil liberties** while imprisoned. The UN Basic Principles for the Treatment of Prisoners declares that "except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights."²¹ Because Article 19 of the UN Universal Declaration on Human Rights states that "everyone has the right to freedom of opinion and expression," the international community generally agrees that prisoners should retain a robust regime of civil liberties while imprisoned.²²

¹⁸ "Global Prison Trends 2019" (Penal Reform International, n.d.), https://cdn.penalreform.org/wp-content/uploads/2019/05/PR1-Global-prison-trends-report-2019_WEB.pdf, p. 42.

¹⁹ Ibid.

²⁰ "Solitary Confinement," Association for the Prevention of Torture, accessed June 22, 2020, <https://www.ap.t.ch/en/knowledge-hub/detention-focus-database/safety-order-and-discipline/solitary-confinement>.

²¹ "OHCHR | Basic Principles for the Treatment of Prisoners." Accessed June 21, 2020. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx#:~:text=1.,property%2C%20birth%20or%20other%20status>.

²² "Universal Declaration of Human Rights," October 6, 2015. <https://www.un.org/en/universal-declaration-human-rights/index.html>.

Meanwhile, the U.S. Supreme Court has ruled that the First Amendment entitles prisoners to receive and send mail, subject only to the institution's need to protect security.²³ In addition, in the case *Turner v. Safley*, the Supreme Court ruled that a violation of prisoners' constitutional rights is only valid if it is "reasonably related to legitimate penological interests."²⁴ In practice, however, prisoners' rights to free expression are often violated for reasons that have nothing to do with **penological interests**. Correctional officials frequently attempt to restrict prisoners' access to mail, curtail prisoners' ability to communicate with their family, and make it difficult for prisoners to receive reading material.²⁵ Arguably, doing these actions hinders "legitimate penological interests" as it makes it more difficult for a prisoner to feel hopeful, and can sever the community ties a prisoner requires to help them re-enter society upon their release.

In addition, prisoners' religious liberties is an issue that merits special discussion here. In the United States, prisoners' right to practice their religion of choice is upheld by the Religious Land Use and Institutionalized Persons Act. Prisons are not supposed to "substantially burden a prisoner's exercise of his or her religion unless it can demonstrate that it has a compelling interest that cannot be achieved through any other less restrictive means."²⁶ However, throughout the United States, prisons have constructed policies that frequently violate the First Amendment rights of prisoners. For example, there have been policies forbidding prisoners from possessing any reading material besides the Bible, policies forbidding prisoners from wearing religious headgear, and policies that prohibit the accommodation of the dietary needs of Jewish prisoners.²⁷

Discrimination against religious prisoners is also a phenomenon in other countries. According to Human Rights Watch, the head of operations in one prison in Uzbekistan ordered that all water

²³ Katzenstein, Mary Fainsod. "Rights without Citizenship:: Activist Politics and Prison Reform in the United States." In *Routing the Opposition*, edited by David S. Meyer, Valerie Jenness, and Helen Ingram, NED-New edition., 23:236–58. Social Movements, Public Policy, and Democracy. University of Minnesota Press, 2005.
<https://www.jstor.org/stable/10.5749/j.cttttdp7.15>.

²⁴ "Prisoners' Rights | Freedom Forum Institute." Accessed June 21, 2020. <https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-religion/free-exercise-clause-overview/prisoners-rights/>.

²⁵ "Civil Liberties in Prison | American Civil Liberties Union." Accessed June 21, 2020.
<https://www.aclu.org/issues/prisoners-rights/civil-liberties-prison>.

²⁶ "Religious Freedom in Prison | American Civil Liberties Union." Accessed June 21, 2020.
<https://www.aclu.org/issues/prisoners-rights/civil-liberties-prison/religious-freedom-prison>.

²⁷ Ibid.

containers be taken from Muslim prisoners and be burnt. This prevented Muslims from carrying out their daily ablutions, which are traditionally done before prayers.²⁸

Part 5: Pre-trial justice

Thus far, this section has only focused on the rights violations of people who have been incarcerated as a result of them being convicted of a crime. However, many people in jails around the world have not been convicted of a crime, but rather, are there because they are awaiting their trial. These people comprise around 30 percent of the prison population worldwide, and the issue of prisoner rights extends to them as well.²⁹

One way that prisoner rights extends to pretrial detainees is with regards to incarcerated people's right to legal counsel. Preparing for one's trial from prison can be extremely challenging, and even more so when prison policies make it difficult for one to communicate with a lawyer, or cannot afford one. The UN General Assembly has encouraged member states to provide legal aid to the "maximum extent possible."³⁰

People who are in prison pre-trial are often there because they are poor and unable to afford bail. Pre-trial detention can have a permanent negative impact on these people's mental and physical health after their incarceration, even if they are eventually found not guilty of the crime they were charged with. Even a short duration of incarceration can cause irreversible psychological damage, or physical health conditions (for example, if someone contracts a disease while imprisoned).³¹ In addition, though it is greatly utilized in many countries, **pre-trial detention** often is not necessary to prevent the detainee from fleeing, if said detainee is a flight risk. In fact, alternatives (that are often

²⁸ "Religious Freedom in Uzbekistan, Turkmenistan, and Georgia," Human Rights Watch, February 8, 2004, <https://www.hrw.org/news/2004/02/08/religious-freedom-uzbekistan-turkmenistan-and-georgia>.

²⁹ Penal Reform International. "Pre-Trial Detention: The Issue." Accessed June 21, 2020. <https://www.penalreform.org/issues/pre-trial-justice/issue/>.

³⁰ "United Nations Official Document." Accessed June 21, 2020. https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/187.

³¹ "Key Facts - Penal Reform International." Accessed June 21, 2020. <https://www.penalreform.org/issues/pre-trial-justice/key-facts/>.

less expensive) exist, such as asking the detainee to report to police, surrender their travel documents, or submit to electronic monitoring.³²



Part 6: Harsh sentencing

By one count, 140 states and territories have abolished the death penalty either in law or in practice, while 58 states and territories in the world still retain the death penalty as a legal punishment.³³ The death penalty has been a carefully scrutinized aspect of the criminal legal system because it is irreversible, and as long as the death penalty is on the books, there is a risk of the state executing innocent people. In recent years, countries have trended towards abolishing the death penalty as a growing body of research signals that the death penalty does not deter crime more effectively than other punishments.³⁴

³² Penal Reform International. "Pre-Trial Detention: The Issue." Accessed June 21, 2020.

<https://www.penalreform.org/issues/pre-trial-justice/issue/>.

³³ Death Penalty Information Pack. (Penal Reform International, 2015), https://cdn.penalreform.org/wp-content/uploads/2014/11/PRI-Death-penalty-info-pack_2017-3rd-edition_WEB.pdf.

³⁴ "The Issue," Penal Reform International, n.d., <https://www.penalreform.org/issues/death-penalty/the-issue/>.

As some countries abolish the death penalty, however, life imprisonment is becoming the most severe penalty available in a growing number of countries. In 183 out of 216 countries and territories, formal life imprisonment is a legal penalty that exists, according to Penal Reform International. (Sixty-seven of those states also allow children to be sentenced to life imprisonment.)³⁵ The number of people serving life sentences around the world has also increased greatly: in 2000, there were roughly 261,000 people serving life sentences, compared to 479,000 people in 2014.³⁶ Yet, although the decrease of the use of the death penalty globally makes it less likely that innocent people will be executed, the rise in the use of life imprisonment means that a large number of people will still die in prison, some after many hopeless years. And, like the use of the death penalty, the use of life imprisonment signals to people that there is a certain subgroup of the population for which rehabilitation is simply impossible.

Part 7: A quick note regarding groups especially at risk

Certain sections of the incarcerated population are especially vulnerable to abuses and flaws in the system. Some examples of these groups that the advocacy group Penal Reform International lists on its website are children/juveniles in prison, women in prison, people with disabilities, and poor and socially excluded populations.³⁷ When researching possible clause ideas regarding this topic, it is important to consider how to ensure that the safety, dignity, and humanity of these especially vulnerable groups is protected.

For example, certain groups in the U.S. have made an effort to push for the abolition of solitary confinement for children. As discussed above, solitary confinement can have long-term psychological effects on an individual, and these effects can be especially pronounced for children, as their brains are still developing and growing.³⁸

³⁵ "The Issue," Penal Reform International, n.d., <https://www.penalreform.org/issues/life-imprisonment/issue/>.

³⁶ Ibid.

³⁷ "Issues," Penal Reform International, n.d., <https://www.penalreform.org/issues/>.

³⁸ Nicole Scialabba, "Making the Case to End Solitary Confinement for Juveniles," American Bar Association, June 27, 2016, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2016/making-case-end-solitary-confinement-juveniles/>.

Questions for delegates (you!) to consider as you proceed with research:

- What will your country's stance on the problem of prison overcrowding be (especially in the context of prisons being epicenters for the COVID-19 pandemic)?
- What are the legitimate reasons for the existence of solitary confinement (if any)? What will your stance be on the topic as your country's delegate — do you favor reforming the practice, or abolishing it altogether?
- What are examples of civil liberties that prisoners should have access to while incarcerated?
- What are examples of reforms to your country's pre-trial detention system that you could propose?
- What are the legitimate reasons for the existence of harsh sentencing (if any)? Do you favor reducing the frequency of it, or abolishing it altogether?
- What is one idea for a reform aimed specifically at a group especially at risk (juveniles, women in prison, people with disabilities, or people in private prisons) that you could hypothetically include as a clause in a draft resolution?

History of the Problem

Abstract

This section of the background guide first outlines a history of prisoner rights and prison conditions more broadly in the United States, then moves to give an overview of the history of international prisoner rights. As you will learn from reading this section, prison conditions have improved over the past few centuries, but progress in the fields of prison conditions and prisoner rights has been very slow-moving and there is still much important progress to be made in these fields.

Part 1: US Prisoner Rights

We'll be starting off with a history of prisoner rights in the U.S. in the 20th century, since that's when the seeds of today's major problems in the area of prisoner rights were planted. In case you're curious about prisoner rights in the U.S. in the 18th and 19th centuries, you can find that as an appendix to this background guide.

US Prisoner Rights in the 20th century

The Supreme Court's decision in *Ex Parte Hull* in 1941 marked an important turning point for prisoners' rights.³⁹ In *Hull*, the Court ruled that states could not interfere with a prisoner's right to apply to the federal courts for a writ of habeas corpus.⁴⁰ (The right of habeas corpus, which is Latin for "you have the body," allows prisoners to argue in federal court that their state court sentence or conviction violates federal law.)

Starting in the 1970s, the US's prison population began to grow very rapidly.⁴¹ In addition, during this time, many people were given prison sentences for drug-related offenses, in what came to be known as the "War on Drugs." Many sentencing guidelines pertaining to drug-related offenses were also racially discriminatory. For example, until 2010, federal laws punished crack cocaine offenses one

³⁹ Feierman, Jessica. "The Power of the Pen: Jailhouse Lawyers, Literacy, and Civic Engagement," *Harvard Civil Rights-Civil Liberties Law Review* 41, no. 2 (Summer 2006).

⁴⁰ "Ex Parte Hull, 312 U.S. 546 (1941)," *Justia Law*, n.d., <https://supreme.justia.com/cases/federal/us/312/546/>.

⁴¹ German Lopez, "Mass Incarceration in America, Explained in 22 Maps and Charts," *Vox*, October 11, 2016, <https://www.vox.com/2015/7/13/8913297/mass-incarceration-maps-charts>.

hundred times more severely than offenses involving powder cocaine (someone selling five hundred grams of powder cocaine would get a five-year sentence, while someone selling only five grams of crack cocaine would get the same sentence.) Since the majority of crack cocaine users were Black, this law disproportionately impacted Black communities.⁴²

In large part due to the War on Drugs, mass incarceration in the United States today continues to disproportionately impact Black and Brown communities, especially low-income Black and Brown communities. Research has also shown that Black people are much more likely to be arrested for drug-related offenses, even though they are not more likely to use or sell them.⁴³ As scholar Michelle Alexander puts it: "Nothing has contributed more to the systematic mass incarceration of people of color in the United States than the War on Drugs."⁴⁴

In 1964, the Supreme Court ruled in *Cooper v. Pate* that prisoners had the right to file lawsuits challenging discrimination under Section 1983 of the Civil Rights Act of 1871. This expanded the ability of prisoners to file civil rights-related claims in court. *Cooper* was brought to the Court by a Black Muslim; in general, the Nation of Islam was very politically active in the struggles for prisoners' rights in the 1960s and 1970s.⁴⁵

In 1971, an uprising took place at Attica Prison in New York State. Protesting their living conditions and lack of political rights, about 1300 out of the 2200 prisoners at Attica rebelled and took control of the prison. Prisoners took 42 staff hostage and made 33 specific demands. Among them were: the New York State minimum wage should apply to prison labor; legal assistance should be granted to all prisoners who demanded it; and adequate food, water, and shelter be provided for prisoners. Authorities eventually agreed to 28 of these demands in some form.⁴⁶

The uprising concluded after four days of negotiations, at which point state police took back control of the problem. Thirty-three prisoners and ten correctional officers were killed in the uprising. In the

⁴² Michelle Alexander, *The New Jim Crow* (New York: The New Press, 2010), p. 112-114. In 2010, the 100:1 sentencing ratio was reduced to 18:1 with the passage of the Fair Sentencing Act.

⁴³ German Lopez, "The War on Drugs, Explained," Vox, May 8, 2016, <https://www.vox.com/2016/5/8/18089368/war-on-drugs-marijuana-cocaine-heroin-meth>.

⁴⁴ Alexander, *The New Jim Crow*, p. 60.

⁴⁵ Katzenstein, p. 242.

⁴⁶ Heather Ann Thompson, *Blood in the Water* (Pantheon, n.d.), p. 120-126.

wake of the uprising, the public began to grow more cognizant of prison conditions, and a grievance procedure was instituted by the New York State Department of Corrections. In addition, judges became more sympathetic to hearing *pro se* appeals filed by prisoners. (*Pro se* is Latin “for oneself,” and thus a *pro se* appeal by a prisoner is an appeal that the prisoner, rather than a prisoner’s lawyer, files for themselves.)⁴⁷

In the 1980s, the foundations for the super-maximum (“supermax”) prisons of today were laid. In 1983, the entirety of the United States Penitentiary in Marion, Illinois was put on lockdown. This lockdown meant that prisoners were confined to their cells twenty-three hours a day. Although this lockdown was intended to be temporary, it became permanent, and thus became the general model for the supermax prison.⁴⁸ The US has exported the supermax prison idea to other countries, with Turkey adopting “F-Type” prisons inspired by the US’s supermax prisons,⁴⁹ and Brazil building its Catanduvas Prison with 208 solitary confinement cells.⁵⁰

In the 1990s, court rulings and legislation restricted the rights that prisoners were entitled to. Among many things, the Violent Crime Control and Law Enforcement Act, commonly known as the 1994 Crime Bill, eliminated federal Pell Grants for prisoners. This caused the forcible ending of many educational programs in prisons, and it made it vastly more difficult for prisoners to be able to acquire the means to educate themselves and improve their situations.⁵¹

Also in 1994, the Supreme Court established the standard by which prisoners can claim their Eighth Amendment rights are being violated. In a unanimous ruling in *Farmer v Brennan*, the Court ruled that prison officials violate the cruel and unusual punishment clause of the Eighth Amendment if they show a “deliberate indifference” to a substantial risk of serious harm to a prisoner.⁵²

⁴⁷ Katzenstein, p. 245.

⁴⁸ Davis, *Are Prisons Obsolete?*, p. 49.

⁴⁹ Davis, *Are Prisons Obsolete?*, p. 101.

⁵⁰ Baz Dreisinger, “How America Exported Its Prison System to the World,” *The Atlantic*, September 30, 2015, <https://www.theatlantic.com/international/archive/2015/09/us-world-prisons-supermax-incarceration/408067/>.

⁵¹ Dan Pens, “Prisoners Lose Pell Grants,” *Prison Legal News*, December 15, 1994, <https://www.prisonlegalnews.org/news/1994/dec/15/prisoners-lose-pell-grants/>.

⁵² “*Farmer v. Brennan*,” Oyez, n.d., <https://www.oyez.org/cases/1993/92-7247>.

In 1996, the Antiterrorism and Effective Death Penalty Act (AEDPA) and Prison Litigation Reform Act (PLRA) were signed into law. These two acts made it more difficult for prisoners to file lawsuits in court. The AEDPA placed a one-year deadline for all prisoners to file a federal habeas appeal.⁵³ Meanwhile, the PLRA made it much more difficult for prisoners to file lawsuits by requiring them to exhaust their prison's grievance process before filing a lawsuit, and requiring prisoners to pay legal fees even if they are indigent. This problem was further compounded by the 1996 Supreme Court decision *Lewis v. Casey*, which established that prisoners have "no absolute right to a law library or even to represent themselves effectively in court."⁵⁴

US Prisoner Rights in the 21st century

The topics of prisoner rights and prison conditions remain contentious in the United States today, and in recent years, legislators, courts, and activists have effected many changes to the criminal legal system. For example, in 2018, the First Step Act was signed into law.⁵⁵ This legislation makes certain changes to the nation's federal prison system; among many changes, the FSA reduces certain mandatory minimum sentencing guides and requires that the BOP places prisoners in facilities within 500 driving miles of their families or homes.⁵⁶

Another example of prisoner rights being in the headlines lately is the case of Amendment 4 in Florida. Amendment 4 was overwhelmingly passed by Florida voters on Election Day 2018, and it stated that most Floridians with felony convictions could "automatically" regain voting rights once they complete "all the terms of their sentence including parole or probation"; in effect, Amendment 4 was an anti-felony disenfranchisement constitutional amendment.⁵⁷ After the Amendment was passed by voters, the Florida Legislature passed a law stating that felony convictions must repay all their "financial obligations" that they were sentenced to before they can regain their voting rights. However, this law was struck down by an appeals court in 2020 after voters and advocacy groups

⁵³ Ken Armstrong, "Death by Deadline, Part One | The Marshall Project," November 15, 2014, <https://www.themarshallproject.org/2014/11/15/death-by-deadline-part-one>.

⁵⁴ Feierman, Jessica. "The Power of the Pen: Jailhouse Lawyers, Literacy, and Civic Engagement," *Harvard Civil Rights-Civil Liberties Law Review* 41, no. 2 (Summer 2006), p. 360

⁵⁵ "BOP: First Step Act Overview," n.d., <https://www.bop.gov/inmates/fsa/overview.jsp>.

⁵⁶ Justin George, "What's Really in the First Step Act?," The Marshall Project, November 16, 2018, <https://www.themarshallproject.org/2018/11/16/what-s-really-in-the-first-step-act>.

⁵⁷ Daniel Rivero, "Everything You Need To Know About Florida's Amendment 4 Lawsuit," WLRN, October 4, 2019, <https://www.wlrn.org/news/2019-10-04/everything-you-need-to-know-about-floridas-amendment-4-lawsuit>.

filed a lawsuit; the court ruled that the law “unconstitutionally punishes a class of felons based only on their wealth.”⁵⁸

The existence of prisoner rights has always been tenuous in the US, but the ongoing coronavirus pandemic puts the continued existence of prisoner rights in a perilous situation. For example, since the coronavirus pandemic began, there has been an estimated rise in the use of solitary confinement by 500%.⁵⁹ This has occurred since some prison officials believe that housing prisoners in solitary confinement cells can curb the spread of coronavirus; however, this is doubtful, as prisoners will under-report symptoms of COVID-19 when faced with the threat of solitary confinement.⁶⁰ Furthermore, many visiting privileges and programming for prisoners (whether recreational or educational) have been suspended since the coronavirus pandemic started.⁶¹ It remains to be seen whether these privileges and programs will be restored if and when the pandemic subsides.

Part 2: International prisoners' rights

The international community has only begun to discuss the issue of prisoner rights relatively recently. Before international standards for the treatment of prisoners were laid out, however, the international community adopted the Geneva Convention on Prisoners of War in 1929.⁶² Among the many tenets that this document laid out were the specifications that all prisoners of war have the right to honor and respect, that prisoners of war cannot have their personal possessions taken from them, and that prisoners of war cannot be denied food as a punishment. The Geneva Convention on

⁵⁸ Mark Joseph Stern, “Florida Amendment 4: 11th Circuit Court of Appeals Blocks Republican Poll Tax.,” *Slate*, February 19, 2020, <https://slate.com/news-and-politics/2020/02/amendment-4-eleventh-circuit-florida-voting.html>.

⁵⁹ “Solitary Confinement Is Never the Answer,” n.d.

<https://static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860eod57doce8195/1592247570889/June2020Report.pdf>.

⁶⁰ Coronavirus VIII: Prisons & Jails: Last Week Tonight with John Oliver (HBO), 2020, <https://www.youtube.com/watch?v=MuxnHoVAKAM>.

⁶¹ Rabuy, Bernadette and Bertram, Wanda, “Jails and Prisons Are Suspending Visits to Slow COVID-19. Here’s What Advocates Can Do to Help People inside.,” *Prison Policy Initiative* (blog), March 17, 2020, <https://www.prisonpolicy.org/blog/2020/03/17/covid19-visits/>.

⁶² “Treaties, States Parties, and Commentaries - Geneva Convention on Prisoners of War, 1929,” *International Committee of the Red Cross*, n.d., <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/305>.

Prisoners of War was later replaced by the Third Geneva Convention, adopted by the UN in 1949.⁶³ (All 193 signatories to the UN Charter are bound by the Geneva conventions.)

In 1948, the UN ratified the Universal Declaration of Human Rights. Though this document deals with human rights more broadly, Article 5 of the UDHR can be read as an article that is directly concerned with prisoner rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁶⁴ Throughout the UDHR, broad language like “no one” and “everyone” is used, so one could read the UDHR literally and interpret it in a way that suggests that prisoners are entitled to all the rights it describes. However, Article 3 of the UDHR states that “everyone has the right to life, liberty and security of person.”⁶⁵ Prisoners are by definition deprived of liberty, so clearly this Article of the UDHR does not apply to them. Since the passing of the UDHR, other international documents have tried to clarify just what human rights prisoners are entitled to.

One of the most important international documents in this topic area is the United Nations Standard Minimum Rules for the Treatment of Prisoners, which came into force in 1955. At the core of the Standard Minimum Rules is the tenet that the prison system should not, “except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent” in a prisoner’s deprivation of liberty.⁶⁶

The UN updated and revised the Standard Minimum Rules for the Treatment of Prisoners in December 2015. The revised version of the rules came to be known as the Nelson Mandela Rules.⁶⁷ Many significant rules were added, including restrictions on the use of solitary confinement (as well as a definition of solitary confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact.”)⁶⁸ A new section giving prisoners the right to notify their family

⁶³ “Treaties, States Parties, and Commentaries - Geneva Convention (III) on Prisoners of War, 1949,” International Committee of the Red Cross, n.d., <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/375>.

⁶⁴ “Universal Declaration of Human Rights,” October 6, 2015, <https://www.un.org/en/universal-declaration-human-rights/>.

⁶⁵ Ibid.

⁶⁶ “OHCHR | Standard Minimum Rules for the Treatment of Prisoners,” United Nations Human Rights Office of the High Commissioner, n.d., <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>.

⁶⁷ Penal Reform International, *The Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, 2016, https://cdn.penalreform.org/wp-content/uploads/2016/01/PRI_Nelson_Mandela_Rules_Short_Guide_WEB.pdf.

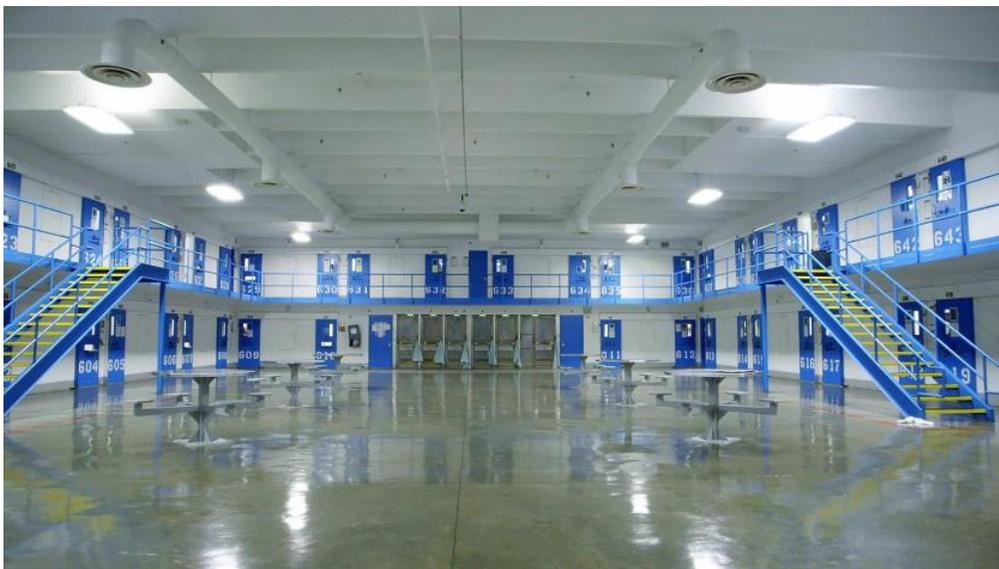
⁶⁸ Ibid., see Rule 44.

of their imprisonment was also added.⁶⁹ The Mandela rules also state that “prisoners should enjoy the same standards of health care that are available in the community.”⁷⁰

In addition, the International Covenant on Civil and Political Rights came into effect in 1976. The CCPR states that “no one shall be required to perform forced or compulsory labour,” yet also clarifies that “in countries where imprisonment with hard labour may be imposed as a punishment for a crime,” a “competent court” may be allowed to sentence someone to forced labour.⁷¹ The CCPR also states that “the essential aim” of the penitentiary system should be the “reformation and social rehabilitation” of prisoners.⁷² Finally, the CCPR states that “no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”⁷³

Part 3: Case Studies of Selected Countries in Africa

In this section, we’re going to dive into what historical events have shaped the status of prisoner rights in African countries.



⁶⁹ Ibid., see Rules 68-70.

⁷⁰ Ibid., see Rule 24.

⁷¹ “OHCHR | International Covenant on Civil and Political Rights,” n.d., <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>. See Article 3.

⁷² Ibid. See Article 10.

⁷³ Ibid. See Article 11.

The histories of criminal justice systems and prisoner rights in African countries are closely intertwined with the histories of colonialism on the continent. Prior to the arrival of colonists, many legal systems developed by and for indigenous people existed. For example, prior to the arrival of British people in Ghana, and prior to the enforcing of British common law in Ghana, people in Ghana used to have a system to resolve disputes named *kima*. Under the *kima* system, whenever community members had conflicts between each other, their matter had to be reported to the clan leader or the chief, who would hear all parties tell their side of the story. Afterwards, the person in power would make a decision as to the outcome of the case. As Julena Jumbe Gabagambi writes: "The decision was meant to unite the disputants and not to cause more enmity; it was imperative for the leaders to ensure that the offender pays compensation and ask for forgiveness. Once that was done, then the parties had to eat in the same bowl and where necessary danced together as a sign of total forgiveness and unity."⁷⁴

However, in 1874, the first local legislature was established in Ghana by the British and English law was first officially introduced to Ghana (then called the Gold Coast).⁷⁵ In 1957, the Gold Coast won independence from Britain, and a Courts Act was passed in 1960 which completed the fusion of Ghana's native courts (based on native laws) and local courts (based on British common law).⁷⁶

Another example of colonialism's effects on a country's criminal justice system can be found in Uganda. Uganda gained its independence from Britain in 1962, and afterwards, continued to use the colonial legal system to handle criminal matters.⁷⁷ However, this has led to discontent from Ugandan community members, as some people (including those who have been affected by more than 20 years of civil war) favor more restorative models of justice compared to the colonial retributive system.⁷⁸ Because of this, in recent years, Uganda has elected to undertake some criminal justice

⁷⁴ Julena Jumbe Gabagambi, "A Comparative Analysis of Restorative Justice Practices in Africa," Hauser Global Law School Program, n.d., https://www.nyulawglobal.org/globalex/Restorative_Justice_Africa.html.

⁷⁵ Harrison A Amankwah, "Ghanaian Law: Its Evolution and Interaction with English Law," *Cornell International Law Journal* 4, no. 1 (n.d.): 38.

⁷⁶ *Ibid.*, 52.

⁷⁷ Julena Jumbe Gabagambi, "A Comparative Analysis of Restorative Justice Practices in Africa," Hauser Global Law School Program, n.d., https://www.nyulawglobal.org/globalex/Restorative_Justice_Africa.html.

⁷⁸ Simon Robins, "Restorative Approaches to Criminal Justice in Africa: The Case of Uganda," vol. Monograph 61, Institute for Security Studies, n.d., 57–84, https://www.researchgate.net/profile/Simon_Robins2/publication/242546766_4_Restorative_approaches/links/5537e1ef0cf2239f4e7959d6/4-Restorative-approaches.pdf.

reforms: for example, in 1996, it passed a Children’s Statute that “incorporated restorative justice practices for cases involving young offenders.”⁷⁹ In addition, in 2001, Uganda introduced a community service program in response to the crisis of overcrowding in its prison system.⁸⁰

As a final example, we will turn to the example of Rwanda. Before gaining its independence in 1962, it was a colony of Germany and Belgium, and adopted aspects of those countries’ legal systems. However, after the Rwandan genocide in 1994, Rwanda turned to a traditional form of dispensing justice: the *gacaca* courts. These were hearings that were intended to foster an environment where those who caused harm could accept responsibility for their actions during the genocide; the hearings were also intended to contribute to reconciliation between Rwanda’s main ethnic communities: the Hutu, Tutsi, and Batwa.⁸¹ (The *gacaca* courts will also be mentioned in the Possible Solutions and Bloc Positions sections of this background guide.)

⁷⁹ Julena Jumbe Gabagambi, “A Comparative Analysis of Restorative Justice Practices in Africa,” Hauser Global Law School Program, n.d., https://www.nyulawglobal.org/globalex/Restorative_Justice_Africa.html.

⁸⁰ Ibid.

⁸¹ Ibid.

Past Actions

Over the past seventy five years, national governments and international institutions have made many efforts to protect the rights of prisoners around the world.

International documents

1. Geneva Conventions

- a. The Geneva Conventions, some of the most well known documents protecting human rights, is specifically applied to prisoners of war, civilians who are not fighting, and those who are no longer able to fight⁸². The four conventions, adopted between 1864 and 1949, have been ratified by all UN member states, and three other protocols which have not been as widely ratified. The conventions lay out the protections of human rights in wartime, both in international and non-international conflicts. The *Third Geneva Convention* deals with the treatment of prisoners of war, protecting against torture and inhumane activity. While the conventions do not explicitly protect prisoners outside the context of war, the ratification of the conventions is seen as a landmark achievement in humanitarian law, and its language can be seen as a precursor for several documents which followed its ratification to protect prisoners outside the context of war.

2. International Covenant on Civil and Political Rights

- a. As part of the International Bill of Human Rights, the *International Covenant on Civil and Political Rights*⁸³, effective since March 1976, lays out protections of basic human rights, ranging from the right of self-determination, religious freedom, equality before the law, and freedom from torture, among many others. When ratified, governments

⁸² International Committee of the Red Cross. "The Geneva Conventions of 1949 and their Additional Protocols." <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>

⁸³ "OHCHR | International Covenant on Civil and Political Rights." n.d. Accessed September 17, 2020. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

are compelled to take “administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.”⁸⁴ Several articles deal specifically with protections of prisoners, including most fundamentally, the right to life, in Article III. Article X, meanwhile, states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Other articles within the document begin to outline protections for the accused, including the right to a fair and public hearing. In many ways, this document provided a foundation that later conventions could build on in terms of how countries were obligated to protect the rights of the accused and those imprisoned. The document still provided freedom for sovereign states to determine how the law could be applied, and did not outright prohibit the exercise of the death penalty.

3. UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (+ Optional Protocol)

- a. In 1987, the *United Nations Convention against Torture* became effective. More explicit than the Covenant on Civil and Political Rights, the Convention against torture has since become part of *customary international law*, which is defined as general practice that is accepted as law⁸⁵ although it does not necessarily have to be codified in sovereign states’s written laws. Usually, these customary international laws include slavery, genocide, and crimes against humanity. One of the most important parts of the Convention Against Torture is how the document, and thus any states who have ratified the document, defines torture in article 1 essentially “as the infliction of severe physical and/or mental suffering committed under the color of law.”⁸⁶ However, the convention goes one step farther in article 16, to state that “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman

⁸⁴ “FAQ: The Covenant on Civil & Political Rights (ICCPR).” n.d. American Civil Liberties Union. Accessed September 17, 2020. <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr>.

⁸⁵ Article 38 “Statute of the Court | International Court of Justice.” n.d. Accessed September 17, 2020. <https://www.icj-cij.org/en/statute>.

⁸⁶ U.S. Congressional Research Service “U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques” (RL32438; January 26, 2009), by Michael J Garcia. Accessed September 17, 2020. <https://fas.org/sgp/crs/intel/RL32438.pdf>.

or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁸⁷ An optional protocol lays out a system in which independent observers are afforded visits in order to ensure that those imprisoned are not being tortured or inhumanely treated⁸⁸.

4. UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)

- a. Where the previous documents focused on extreme behaviors against prisoners, the *UN Standard Minimum Rules* provided important, but legally non-binding, rules and guidance for sovereign states in the administration of prisons and detention. First developed as resolutions in 1957 and revised in 1977 and 2015, with the newest revision emphasizing the necessity of adequate medical services and legal rights of prisoners, among other changes.⁸⁹ Since the document serves as the international standard for the administration of prisons, when the UN General Assembly called for the newest revision in 2010, it called for a balance between the need to protect human rights while “taking into account the economic, social, legal and cultural specificities of their respective States.”⁹⁰ The document also enumerates general principles not only on the administration of principles but on the purpose of imprisonment, with a strong emphasis on ensuring the inherent human dignity of all of those imprisoned is maintained. The body of the document focuses on a range of topics related to the management of prisons and best practices for the treatment of prisoners, such as accommodations, health and hygiene, food and nutrition, medical services, exercise, security, privacy, process of complaints, investigations and inspections, contact with

⁸⁷ “OHCHR | Convention against Torture.” n.d. Accessed September 17, 2020.

<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

⁸⁸ “OHCHR | Optional Protocol to the Convention against Torture.” n.d. Accessed September 17, 2020.

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>.

⁸⁹ “The United Nations Standard Minimum Rules for the Treatment of Prisoners.” n.d., 38. Accessed September 18, 2020.

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

⁹⁰ “Resolution adopted by the General Assembly on 21 December 2010.” Accessed September 18, 2020.

<https://undocs.org/A/RES/65/230>.

the outside world, availability of books, practices of religion inside prisons, management of personnel, and the principle of individualization of treatment.

5. Similar UN documents closely echo the principles laid out in the standard minimum rules, and either elaborate further to address specific concerns of certain groups, like the *UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)*,⁹¹ the *UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*,⁹² and the *UN Rules for the Protection of Juveniles Deprived of their Liberty*,⁹³ as well as similar documents to the standard minimum rules like the *UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*.⁹⁴ Another document, the *UN Standard Minimum Rules for Non-custodial Measures*⁹⁵ enumerates principles for the administration and protection of those who serve sentences outside of prisons.

Within the United States

The United States has the world's largest prison population, with approximately 3 million people currently in prisons. The difficulty of tracking this number comes from the complexities and intricacies of the criminal justice system spread across federal, state, and local levels.

Cruel, inhuman, and degrading conditions

1. California Proposition 57
 - a. In 2016, California voters passed Proposition 57, or "The Public Safety and Rehabilitation Act of 2016," that is intended to "enhance public safety, stop the

⁹¹ "The UN Rules Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)" n.d., 52. Accessed September 18, 2020. https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

⁹² "United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)" n.d., 17. Accessed September 18, 2020. <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>.

⁹³ "OHCHR | Rules for the Protection of Juveniles Deprived of Their Liberty." n.d. Accessed September 18, 2020. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/JuvenilesDeprivedOfLiberty.aspx>.

⁹⁴ "OHCHR | Protection of All Persons under Any Form of Detention or Imprisonment." n.d. Accessed September 18, 2020. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>.

⁹⁵ "United Nations Standard Minimum Rules for Non-custodial Measures." n.d., 7. Accessed September 18, 2020. <https://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>.

revolving door of crime by emphasizing rehabilitation, and preventing federal courts from releasing inmates.”⁹⁶ Proposition 57 allows incarcerated people to be responsible for their own rehabilitation and provides them with opportunities to earn credit-earning opportunities for their good behavior through in-prison rehabilitative programming.⁹⁷ The bill intends for incarcerated people to be “more productive members of society” upon their lease.⁹⁸ Additionally, those who are incarcerated for non-violent crimes have the opportunity to be paroled early. However, the programming associated with Proposition 57, such as being assigned to a Conservative (Fire) Camp,⁹⁹ is low-paying and is associated with very cruel working conditions. Incarcerated firefighters make approximately \$1.45 per day while containing firefighters and are not covered by minimum wage laws.¹⁰⁰ Recently, California has seen massive wildfires, and a significant portion of California’s firefighter population is comprised of incarcerated people.

2. “Closing down” Rikers

- a. Rikers Island Jail in New York is one of the United States’ most notorious detention centers and has an extensive history of human rights violations.¹⁰¹ Throughout Rikers Island’s history, there have been persistent rat infections, fires, and an unbearable stench related to incarcerated people digging through trash used as landfill to expand the size of the island.¹⁰² It is also well-known for over-detaining people waiting for their trial, and the time that they sit in jail is often longer than their eventual

⁹⁶ California Department of Corrections and Rehabilitation. “Proposition 57: The Public Safety and Rehabilitation Act of 2016.” California Department of Corrections and Rehabilitation, <https://www.cdcr.ca.gov/proposition57/>. Accessed 26 October 2020.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Prison Law Office. “Information on Proposition 57: Prison Credit Rules.” Prison Law Office, May 2019, <https://prisonlaw.com/wp-content/uploads/2019/05/Prop-57-CreditsMay-2019.pdf>. Accessed 26 October 2020.

¹⁰⁰ Fathi, David. “Prisoners Are Getting Paid \$1.45 a Day to Fight the California Wildfires.” American Civil Liberties Union, 15 November 2018, <https://www.aclu.org/blog/prisoners-rights/prisoners-are-getting-paid-145-day-fight-california-wildfires>. Accessed 26 October 2020.

¹⁰¹ Maule Alicia and Liu, Yili. “Remembering Kalief Browder a Year After his Suicide and Why Rikers Island Should be Shut Down.” Innocence Project, 1 July 2016, <https://www.innocenceproject.org/remembering-kalief-browder-year-suicide-rikers-island-shutdown/>. Accessed 26 October 2020.

¹⁰² Lockhart, P.R. “Why a vote to close New York’s Rikers Island is being met with backlash.” Vox, 18 October 2019, <https://www.vox.com/identities/2019/10/18/20921389/rikers-island-new-york-jail-close-new-jails>. Accessed 26 October 2020.

sentences.¹⁰³ In 2015, Kalief Browder, a formerly incarcerated Black man held in solitary confinement at Rikers, committed suicide. He was only 22 years old. He was wrongly incarcerated and charged for stealing a backpack in 2010 at the age of 16 that Browder's brother said never existed, and he languished at Rikers awaiting trial for three years.¹⁰⁴ He was repeatedly beaten up by guards and was put in solitary confinement for 320 days before his charges were dropped, and he was eventually released.¹⁰⁵ Yet despite his innocence, the abuse he was subjected to at Rikers haunted him, leading to his passing. Following his tragic death, there were resounding calls to close down Rikers Island, including his brother, who led the Campaign to Shut Down Rikers. In 2017, New York City Mayor Bill de Blasio announced that Rikers Island would close.¹⁰⁶ On October 17, 2019, the New York City Council voted to support an \$8 billion plan to close Rikers Island by 2026 and replace it with four smaller jails located in Brooklyn, Queens, the Bronx, and Manhattan, respectively.¹⁰⁷ These facilities would only house 900 compared to Rikers Island's population of 10,000.¹⁰⁸ However, many are frustrated by this plan and believe that prisons in the area need to close entirely.¹⁰⁹ Yet to this day, Rikers Island still is operating.

Solitary Confinement

1. Angola 3

- a. Three African American men - Robert King, Herman Wallace, and Alfred Woodfox - were held in solitary confinement for many years while incarcerated at Louisiana State Penitentiary, also known as Angola, which is recognized as one of the South's

¹⁰³ Ibid.

¹⁰⁴ Maule Alicia and Liu, Yili. "Remembering Kalief Browder a Year After his Suicide and Why Rikers Island Should be Shut Down." Innocence Project, 1 July 2016, <https://www.innocenceproject.org/remembering-kalief-browder-year-suicide-rikers-island-shutdown/>. Accessed 26 October 2020.

¹⁰⁵ Ibid.

¹⁰⁶ Lockhart, P.R. "Why a vote to close New York's Rikers Island is being met with backlash." Vox, 18 October 2019, <https://www.vox.com/identities/2019/10/18/20921389/rikers-island-new-york-jail-close-new-jails>. Accessed 26 October 2020.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

most notorious prisons. Alfred Woodfox was held in solitary confinement for 43 years,¹¹⁰ more than any person alive in the United States today,¹¹¹ before he was finally released on February 19, 2016. Herman Wallace passed away from cancer the day after his release from prison in 2013 after spending 41 years in solitary confinement,¹¹² and Robert King was released in 2001 after spending 29 years in solitary confinement.¹¹³ The three men say that they were framed for the murder of a prison guard at Angola in 1972 as retaliation for their involvement with the Black Panther movement.¹¹⁴ They say that they were placed in solitary confinement for so long for this exact reason, because, according to *The Associated Press*, “their Black Panther activism would otherwise rile up inmates at the maximum-security prison farm in Angola,” which thus justified their placement in solitary confinement in the eyes of the deputies at Angola. The prolonged detainment in solitary confinement of the Angola 3 was regarded as an international human rights issue and received attention from the United Nations. In fact, an independent United Nations human rights expert and special rapporteur on torture Juan E. Méndez told U.S. authorities that “four decades in solitary confinement amounts to torture” and urged the U.S. to release Woodfox immediately and abolish the use of prolonged or indefinite solitary confinement.¹¹⁵ The U.N. had concerns about the physical and mental health and well-being of those who are held in these conditions for so long, and this sentiment can be seen when Robert King described his experience in solitary confinement at Angola: “the cells were pretty bare, and they were maybe about ... 3 feet wide and about 6 feet long. It was almost like it was in a tomb, and there was a slab of concrete that you slept on,” King says. ‘You ate three meals a day — you had two slices of bread

¹¹⁰ Kennedy, Merrit. “Last of ‘Angola 3’ Released After More Than 40 Years in Solitary Confinement.” *NPR*, 19 February 2016, <https://www.npr.org/sections/thetwo-way/2016/02/19/467406096/last-of-angola-3-released-after-more-than-40-years-in-solitary-confinement>. Accessed 26 October 2020.

¹¹¹ *NPR* Staff. “After Decades In Solitary, Last of The ‘Angola 3’ Carry On Their Struggle.” *NPR*, 19 March 2016, <https://www.npr.org/2016/03/19/470828257/after-decades-in-solitary-last-of-the-angola-3-carry-on-their-struggle>. Accessed 26 October 2020.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *UN News*. “Four decades in solitary confinement amounts to torture, UN experts tells US authorities.” *UN News*, 7 October 2013, <https://news.un.org/en/story/2013/10/452522-four-decades-solitary-confinement-amounts-torture-un-expert-tells-us>. Accessed 26 October 2020.

each meal. During the wintertime, you froze, and during summertime, you were overheated. But in any event, you were starved.”¹¹⁶ The attention of the United Nations was crucial in getting Alfred Woodfox released. To this day, approximately 61,000 people are currently being held in solitary confinement in the United States in state and federal prisons.¹¹⁷

Pre-trial justice and civil liberties in prison

1. Attica riots

- a. In September 1971, incarcerated people at Attica Correctional Facility in upstate New York staged an uprising to advocate for their civil liberties and demand better living conditions in prison. The uprising, now known as the Attica Prison Uprising, eventually led to a massacre - thirty-three incarcerated people were killed, and ten correctional officers were killed after police took control of the facility. Incarcerated people at Attica had previously written to their state senators in New York and the commissioner of corrections demanding better conditions and asking for funding to compensate for the lack of food, sanitary supplies, and adequate medical care and to draw attention to the overcrowding there.¹¹⁸ Their needs were not met, thus leading to the uprising.¹¹⁹ While the Attica Prison Uprising is defined by a lot of misinformation that has shaped the U.S.’s perception of incarceration to this day,¹²⁰ it is recognized as one of the most significant events in the prisoners’ rights movement. Despite this, prisons are still regarded as not having many civil liberties today.

¹¹⁶ Ibid.

¹¹⁷ Wykstra, Stephanie. “The case against solitary confinement.” *Vox*, 17 April 2019, <https://www.vox.com/future-perfect/2019/4/17/18305109/solitary-confinement-prison-criminal-justice-reform>. Accessed 26 October 2020.

¹¹⁸ Lantigua-Williams, Juleyka. “Is Another Attica on the Horizon?” *The Atlantic*, 9 September 2016, <https://www.theatlantic.com/politics/archive/2016/09/is-another-attica-on-the-horizon/499397/>. Accessed 26 October 2020.

¹¹⁹ Ibid.

¹²⁰ Ibid.

2. *Gideon v. Wainwright* — access to counsel for indigent defendants

- a. The 1963 Supreme Court decision *Gideon v. Wainwright* guaranteed the right to legal counsel for indigent defendants accused of a crime in federal and state courts.¹²¹ The case involved Clarence Earl Gideon, who was accused of breaking into a bar in Panama City, Florida, and arrested but was not able to afford and was forced to represent himself.¹²² Mr. Gideon was then given another trial with an appointed lawyer and was eventually acquitted of the charges. This ruling led to the establishment of public defender offices across the country.¹²³ This decision was important for pre-trial justice. However, many public defenders across the country to this day are severely underfunded compared to district attorneys and are thus incapable of serving indigent clients adequately despite *Gideon v. Wainwright*.¹²⁴

3. Bail reform in New York and subsequent backlash

- a. New York's bail reform law is intended to end cash bail that disproportionately affects low-income people who cannot afford to be bonded out of jail and reduce the state's overall prison population. 67% of all people in county jails across the United States are awaiting trial and are incarcerated for minor offenses.¹²⁵ The bail reform bill was reported to have reduced the number of pretrial detainees in New York jails by more than 40 percent.¹²⁶ However, the bail reform law received backlash from many district attorneys and law enforcement officials who had concerns that it would lead to an increase in crime, sparking revisions of the bill. The bail reform law has since been

¹²¹ United States Courts, "Gideon v. Wainwright Podcast." United States Courts, <https://www.uscourts.gov/about-federal-courts/educational-resources/supreme-court-landmarks/gideon-v-wainwright-podcast>. Accessed 26 October 2020.

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ McCausland, Paul. "Public defenders nationwide say they're overworked and underfunded." *NBC News*, 11 December 2017, <https://www.nbcnews.com/news/us-news/public-defenders-nationwide-say-they-re-overworked-underfunded-n828111>. Accessed 26 October 2020.

¹²⁵ Asgarian, Roxanna. "The controversy over New York's bail reform law, explained." *Vox*, 17 January 2020, <https://www.vox.com/identities/2020/1/17/21068807/new-york-bail-reform-law-explained>. Accessed 26 October 2020.

¹²⁶ *Ibid.*

amended several times since being in effect since January 2020.¹²⁷ Judges can now enforce cash bail in multiple situations and will have more discretion when setting cash bail.¹²⁸

Groups especially at risk

1. Private Prisons

- a. Many incarcerated people in the United States are being held in privately-owned federal and state prisons. The Bureau of Prisons has had contracts with private companies to operate some federal prisons since 1996 in response to severe overcrowding.¹²⁹ Several Department of Corrections across the United States have contracts with private companies, such as the Corrections Corporation of America, the Geo Group, and the Management and Training Corporation (MTC), that operate privately-operated prisons to hold incarcerated people.¹³⁰ In 2016, the Department of Justice decided to eventually end contracts with private companies that run 14 federal prisons that hold about 22,000 people¹³¹ by letting these contracts expire.¹³² They believed that private prisons were not as safe and are generally a poor alternative to state-run facilities.¹³³ However, this decision was reversed in 2017 during the Trump administration. Many states have contracts with private companies to operate their state prisons, but there is much variance among states - in New Mexico, 53% of its

¹²⁷ Merkl, Taryn A. "New York's Latest Bail Law Changes Explained." Brennan Center for Justice, 16 April 2020, <https://www.brennancenter.org/our-work/analysis-opinion/new-yorks-latest-bail-law-changes-explained>. Accessed 26 October 2020.

¹²⁸ Ibid.

¹²⁹ Reuters Staff. "U.S. reverses Obama-era move to phase out private prison." *Reuters*, 23 February 2017, <https://www.reuters.com/article/us-usa-prisons/u-s-reverses-obama-era-move-to-phase-out-private-prisons-idUSKBN1622NN>. Accessed 26 October 2020.

¹³⁰ Sanburn, Josh. "The U.S. Is Ending Private Prisons for Federal Inmates. So Where Will the Prisoners Go?" *Time*, 18 August 2016, <https://time.com/4458308/justice-department-ending-private-prison-contracts/>. Accessed 26 October 2020.

¹³¹ Ibid.

¹³² Reuters Staff. "U.S. reverses Obama-era move to phase out private prison." *Reuters*, 23 February 2017, <https://www.reuters.com/article/us-usa-prisons/u-s-reverses-obama-era-move-to-phase-out-private-prisons-idUSKBN1622NN>. Accessed 26 October 2020.

¹³³ Ibid.

prison population is housed in private facilities, while 22 states do not have privately owned, for-prison prisons.¹³⁴

Harsh sentencing (California 3 strikes law)

- Compared to other countries, the criminal justice system in the United States is associated with harsh sentencing. People convicted of felonies in the United States are more likely to be sentenced to prison and serve more time in prison compared to people convicted of crimes in other countries.¹³⁵ Studies have shown that the long sentences imposed in the United States do not affect public safety and are thus counterproductive.¹³⁶ One example of harsh sentencing in the American criminal justice system is California’s “three strikes” law that arose as a result of the “tough on crime” narrative that defined the criminal justice system in the United States. In 1994, California voters enacted this law that imposed a life sentence for any crime regardless of how minor or serious it was if the defendant had two prior convictions.¹³⁷ Approximately 45 percent of those serving life sentences under California’s “three strikes” law were African American.¹³⁸ This law has since been overturned, and reforms have been enacted to address associated harm, such as through the Three Strikes Reform Act that passed overwhelmingly by voters in 2012,¹³⁹ yet its effects can be seen in the California criminal justice system but also more broadly in the criminal justice system today and affected many formerly incarcerated people and their families, friends, and communities.

¹³⁴ The Sentencing Project. “Private Prisons in the United States.” The Sentencing Project, 24 October 2019, <https://www.sentencingproject.org/publications/private-prisons-united-states/>. Accessed 26 October 2020.

¹³⁵ Mauer, Marc. “Time to Reconsider the Scale of Punishment.” The Sentencing Project, 5 November 2018, <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>. Accessed 26 October 2020.

¹³⁶ Ibid.

¹³⁷ Stanford Law School Three Strikes Project. “Three Strikes Basics.” Stanford Law School Three Strikes Project, <https://law.stanford.edu/stanford-justice-advocacy-project/three-strikes-basics/>. Accessed 26 October 2020.

¹³⁸ Ibid.

¹³⁹ Ibid.

Possible Solutions

Alternative approaches to justice?

As the crisis of mass incarceration grows in the United States, some organizations are beginning to be formed that divert certain cases away from the criminal legal system. One such organization is named Common Justice, and is located in Brooklyn, New York.

Common Justice takes on the cases of people who have been convicted of violent crimes, and provides these people with a way to be held accountable without being forced to undergo incarceration. Instead, Common Justice facilitates conversations between responsible parties and the person or people they have harmed. Together, the participants reach an agreement about how the responsible party can make things as right as possible; typical actions that the responsible party might take include restitution, community service, and/or commitments to attend school and work.¹⁴⁰

Common Justice has been considered by many to be an organization that practices “**restorative justice**,” which is a form of justice that focuses on repairing trust and ties between the responsible party, the people harmed, and the community at large. Restorative justice models are currently being utilized in other countries as well. For example, in the years following the 1994 Rwandan genocide, Rwanda promoted large-scale reconciliation and restorative justice. Instead of focusing on punishment, the Rwandan government set up community gatherings in which community members discussed and agreed on compensations to be undertaken by those who had perpetrated harm during the genocide.¹⁴¹ This system was named the *gacaca* court system; *gacaca* is Kinyarwanda for “grass,” and this name was meant to indicate that justice and truth-telling would take place out in the open (on grassy fields) rather than behind closed doors.¹⁴²

¹⁴⁰ “Common Justice Model - Common Justice,” Common Justice, accessed August 28, 2020, https://www.commonjustice.org/common_justice_model. For a more detailed description of Common Justice’s work, see *Until We Reckon* by Danielle Sered.

¹⁴¹ Baz Dreisinger, *Incarceration Nations* (New York: Other Press, 2016), p. 25.

¹⁴² *Ibid.*, p. 29.

One possible solution for tackling the crisis of prisoners' rights is to take actions so that as few people as possible ever become prisoners. Thus, as a delegate in this committee, you should consider possibilities for alternatives to incarceration, such as restorative justice, and any potentials for decarceration.

Raising awareness of prison conditions

The issue of prisoners' rights is a difficult one to try to ameliorate simply because prisons, by their nature, are often incredibly shut off to the outside world. The coronavirus epidemic has only exacerbated this problem: prison visits by outsiders were permitted under certain circumstances pre-coronavirus, but due to the possibilities of COVID-19 transmission, US federal prisons have suspended all prison visits system-wide as of August 2020; the suspension has been in place since March 13, 2020.¹⁴³ In addition, although the UK has not suspended all prison visits system-wide, prisons are suspending visits on a case-by-case basis.¹⁴⁴

The suspension of prison visits is troubling for a variety of reasons. Firstly, it cuts off a vital form of contact between incarcerated people and their family members and loved ones, who can provide a great sense of stability and psychological comfort. Thus, the policy violates Rule 58 of the UN's Standard Minimum Rules for the Treatment of Prisoners, which states that "Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals."¹⁴⁵

Secondly, as an alternative to physical, in-person visits, prisons may offer phone calls to incarcerated people, but then charge them for these phone calls at exorbitant rates.¹⁴⁶ Since many incarcerated

¹⁴³ Federal Bureau of Prisons. "BOP: BOP's COVID-19 Modified Operations," November 25, 2020. https://www.bop.gov/coronavirus/covid19_status.jsp.

¹⁴⁴ "Coronavirus (COVID-19) and Prisons," GOV.UK, March 13, 2020, <https://www.gov.uk/guidance/coronavirus-covid-19-and-prisons>.

¹⁴⁵ "The United Nations Standard Minimum Rules for the Treatment of Prisoners," United Nations Office on Drugs and Crime, n.d., https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

¹⁴⁶ "Regulating the Prison Phone Industry," Prison Policy Initiative, accessed August 28, 2020, <https://www.prisonpolicy.org/phones/>.

people worldwide come from marginalized backgrounds and are thus likely not to possess much wealth, they may not be able to afford these rates.¹⁴⁷

Thirdly, the suspension of in-person prison visits makes it more difficult for the attorneys of incarcerated people to visit their clients. It not only makes it difficult for incarcerated people to have confidential conversations with their attorneys, but also makes it difficult for attorneys to ascertain prison conditions for themselves.

Delegates should consider drafting and supporting clauses that can facilitate the strengthening of communication between prisons and the outside world. For example, delegates should consider clauses that recommend a reduction in phone usage fees, or a doing away with them altogether. In addition, delegates should reflect on how they can draft clauses to ensure that incarcerated people can maintain a steady communication with the attorneys.

Furthermore, improving the media's access to what goes on in prisons and jails may help to raise the general public's awareness of what goes on inside jails and prisons. However, for the most part, prisons and jails worldwide are extremely closed off to reporters. For example, the California Department of Corrections and Rehabilitation is not permitted to set up one-on-one interviews with inmates.¹⁴⁸ In Spain, the Head of Service can use his discretion to request that any prisoner's communications with the media be suspended.¹⁴⁹ Delegates should consider how they could best support access to prisons and incarcerated people for members of the press while also ensuring the rights of incarcerated people are respected.

By supporting initiatives that advocate for a greater flow of information between prisons and the outside world, delegates in this committee can ensure that more members of the general public are aware of the human rights abuses taking place inside prisons.

¹⁴⁷ "Global Prison Trends 2020" (Penal Reform International, n.d.), <https://cdn.penalreform.org/wp-content/uploads/2020/05/Global-Prison-Trends-2020-Penal-Reform-International-Second-Edition.pdf>.

¹⁴⁸ "Media Access to Prisons and Prisoners," News Releases, May 24, 2012, <https://www.cdcr.ca.gov/news/2012/05/24/media-access-to-prisons-and-prisoners/>.

¹⁴⁹ Monica Aranda Ocaña, "Prison Conditions in Spain," European Prison Observatory, September 2013, <http://www.prisonobservatory.org/upload/PrisonconditionsinSpain.pdf>.

Mitigating harsh prison conditions through education programming

In recent years, the topic of rehabilitation has become something that's been discussed more frequently in criminal justice circles. One way that prisoners' rights advocates have sought to support rehabilitation efforts is by creating and facilitating prison education programs, or through donating resources like books to prisons. For example, the Bard Prison Initiative provides courses for incarcerated people inside six New York prisons so that prisoners can leave prison with an associate's degree.¹⁵⁰ Meanwhile, Justice Defenders, an NGO, works with prisons in Sudan, Kenya, Uganda, and the Gambia to train prisoners to become auxiliary paralegals.¹⁵¹ And, nonprofits like Books Through Bars work to fulfill requests for reading material from people in prison across the United States.¹⁵²

In addition to educational programming more broadly, some prison systems in the world have started welcoming creative, arts-related programming to their facilities as a way to support incarcerated people's rehabilitation. For example, at the General Penitentiary in Kingston, Jamaica, activists and educators run the Rehabilitation Through Music program, which teaches incarcerated people to write, perform, and record music. The program was even able to establish a library, computer lab, radio station, and music studio inside the prison.¹⁵³ Meanwhile, in Luzira Prison in Kampala, Uganda, there are creative writing and poetry workshops where incarcerated people read poetry, write their own poetry, and are encouraged to discuss their own personal experiences with their peers.¹⁵⁴ Such programs may appear to be a luxury with no clear purpose, but creative writing programs, or so-called "bibliotherapy", has been shown to promote an ability to explore value systems, strengthen self-esteem, and boost empathy.¹⁵⁵

While these programs doubtless require a great amount of resources and planning to implement, delegates should consider the possible benefits these programs could bring to incarcerated people. These programs would not only fulfill the promise of human rights laid out by international

¹⁵⁰ "College Behind Bars Archives," Bard Prison Initiative (blog), accessed August 28, 2020, <https://bpi.bard.edu/topics/college-behind-bars>.

¹⁵¹ "The Impact | Justice Defenders," Justice Defenders, accessed August 28, 2020, <https://www.justice-defenders.org/impact>.

¹⁵² "About," NYC Books Through Bars (blog), August 20, 2015, <https://booksthroughbarsnyc.org/about/>.

¹⁵³ Baz Dreisinger, *Incarceration Nations* (New York: Other Press, 2016), p. 129.

¹⁵⁴ Bamuturaki Musinguzi, "Luzira: Freeing Minds through Poetry and Stories," *The East African*, accessed August 28, 2020, <https://www.theeastafrican.co.ke/tea/magazine/luzira-freeing-minds-through-poetry-and-stories-1424170>.

¹⁵⁵ Baz Dreisinger, *Incarceration Nations* (New York: Other Press, 2016), p. 127.

documents like the 2015 UN Doha Declaration, which specifically mentions rehabilitation as a priority;¹⁵⁶ these programs could also save governments money in the long run, as they can facilitate prisoners' reintegration into society once they are eventually released from prison.



Guaranteeing pre-trial access to counsel and pre-trial justice more broadly

The United Nations Office on Drugs and Crime has noted that the problem of access to justice and legal aid has contributed to the global prison crisis.¹⁵⁷ For example, in India, state-funded legal aid is not always provided when someone is arrested or brought before a magistrate, which discriminates against people who cannot afford to hire private counsel. In addition, in Brazil, judges in only around

¹⁵⁶ "Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation" (United Nations Office on Drugs and Crime, April 12, 2015), https://www.unodc.org/documents/congress/Declaration/V1504151_English.pdf.

¹⁵⁷ "Addressing the Global Prison Crisis: Strategy 2015-2017" (United Nations Office on Drugs and Crime, n.d.), https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Strategy_on_Addressing_the_Global_Prison_Crisis.pdf.

40 percent of jurisdictions see detainees promptly after they are arrested. Many Brazilian detainees wait months to see a judge, even though their guilt or lack thereof has not been determined.¹⁵⁸

It is clear that greater funding for public legal aid is necessary. In addition, if there is a dearth of lawyers who are willing to take on public cases, community members can be trained in paralegal tasks, and communities can be empowered through legal education. As an example, Namati is an organization that works on three continents to build grassroots legal movements and to train and deploy community paralegals.¹⁵⁹

Another problem worldwide when it comes to pre-trial justice is the lack of oversight regarding how suspects are interviewed or interrogated. In certain countries, interrogators may use coercive tactics to try and extract confessions from people who are detained. Such tactics are both unjust and ineffective in trying to figure out the facts behind the commission of a crime. Thus, some countries have started to adopt a method known as “investigative interviewing,” which is a non-coercive method of interviewing criminal suspects that stems from the “PEACE” model developed in England and Wales in the 1990s.¹⁶⁰ In addition, as of June 2019, Japan has started requiring that interrogations with suspects be video-recorded.¹⁶¹

Delegates should consider drafting clauses that encourage greater funding for public legal aid and discourage those in positions of power from interviewing detainees in a coercive way. Delegates should also consider drafting clauses that recommend that legislation be passed that mandates that people who are detained must be seen by a judge or magistrate relatively promptly. Delegates may want to consider looking at the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems for ideas and inspiration.¹⁶²

¹⁵⁸ “United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,” *United Nations Office on Drugs and Crime*, n.d., 10.

¹⁵⁹ “What We Do,” Namati, accessed August 28, 2020, <https://namati.org/what-we-do/>.

¹⁶⁰ “PEACE” stands for planning and preparation, engage and explain, account clarification and challenge, closure, and evaluation. See <https://www.app.college.police.uk/app-content/investigations/investigative-interviewing/#peace-framework>.

¹⁶¹ “United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,” *United Nations Office on Drugs and Crime*, n.d., 10.

¹⁶² *Ibid.*, 34.

Solitary confinement and harsh sentences

While the UN Standard Minimum Standard Rules for the Treatment of Prisoners (the Mandela Rules) placed a prohibition on indefinite or prolonged use of solitary confinement, the policies of many countries around the world are in violation of this policy.¹⁶³ Delegates should consider if they wish to reaffirm their commitment to the Mandela Rules, or even possibly draft clauses that restrict the use of solitary confinement more than the Mandela Rules already do.

Furthermore, delegates should consider their stances on harsh sentences such as the use of the death penalty, life without parole (LWOP) sentences, and life sentences with the possibility of parole.

A final note about groups especially at risk

In preparing for conference and writing clauses during conference, delegates should recall and be aware that there are many populations who are especially at risk and disadvantaged in the criminal legal system. These groups include juveniles, women and gender non-conforming individuals, and disabled people. In drafting clauses, delegates should give thought to how their possible solutions would ensure that the interests of members of these groups are secured. For example, the problem of suspended prison visits may disproportionately impact juveniles who are incarcerated, as it isolates them from their families which can cause great stigma and psychological harm.¹⁶⁴

¹⁶³ "Global Prison Trends 2018" (Penal Reform International, n.d.), https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Global-Prison-Trends-2018_EN_WEB.pdf, pg. 14.

¹⁶⁴ "The Issue," Penal Reform International, accessed August 28, 2020, <https://www.penalreform.org/issues/children/issue/>.

Bloc Positions

A general note

One thing that you'll quickly learn as you conduct research and prepare to participate in committee is that the state of prisoner rights and prison conditions around the world is universally dire. However, prison conditions are not *uniformly* dire: prison systems around the world suffer from different problems, which is what we'll delve into in this section.

Because of space limitations in this background guide, it would be infeasible to detail the problems and stances of every country on this topic. Thus, as you prepare for committee, we'd highly recommend you take a look at the state of your country's prison system by consulting the World Prison Brief data for your country (which can be accessed at <https://www.prisonstudies.org/world-prison-brief-data>) and the Prison Insider data for your country (at <https://www.prison-insider.com/en/informer/pays>).

These are good starting points for preparation, but they are by no means comprehensive sources of knowledge, so feel free to explore on your own as well!

Asia

The prison systems of many Asian countries use pre-trial detention quite broadly and do not guarantee detainees due process (ie, their legal rights). For example, although India's rate of imprisonment is relatively low by global standards, the percent of people the county detains pre-trial (so, people who haven't been convicted of a crime) is 67 percent.¹⁶⁵ In North Korea, people have been detained by secret police and beaten without even being told what they have been accused of.¹⁶⁶

¹⁶⁵"Alternatives to Imprisonment in South Asia," Penal Reform International, accessed December 6, 2020, <https://www.penalreform.org/where-we-work/south-asia/alternatives-imprisonment/>.

¹⁶⁶"Worth Less Than an Animal," Human Rights Watch, October 19, 2020, <https://www.hrw.org/report/2020/10/19/worth-less-animal/abuses-and-due-process-violations-pretrial-detention-north>.

Delegates representing Asia should be aware of the facts surrounding the incarceration of women in the region. Thailand has one of the highest female prison population rates in the world: for every 100,000 people in the national population, 60.7 women are incarcerated.¹⁶⁷ Only the United States has a higher rate of women prisoners, with around 65.7 women incarcerated for every 100,000 people in the national population.¹⁶⁸ Thailand's high incarceration rate for women exists in part due to harsh sentencing policies for drug-related offenses.¹⁶⁹ (Other countries in the region, such as the Philippines, also have tough laws on the books for drug-related offenses, and have been criticized for the UN because of it.)¹⁷⁰

Thailand is aware of how much it utilizes incarceration: as mentioned in the Past Actions section of this background guide, the Bangkok Rules (the nickname for the UN Rules regarding the treatment of women prisoners) were adopted in December 2010. The Rules became a reality in part because the Thai princess advocated for them¹⁷¹; the Thai princess has also visited women's prisons throughout the country to shine a light on the issue.¹⁷²

Delegates who represent or work with these countries in committee should be sure to brainstorm ideas for how to promote alternatives to incarceration (especially to pre-trial detention), be keen on proposing ideas to safeguard detainees' due process rights, and pay close attention to clauses that seek to improve the conditions for women in prison.

¹⁶⁷ Roy Walmsley, "Women and Girls in Penal Institutions, Including Pre-Trial Detainees/Remand Prisoners," *World Prison Brief*, 2005, 8.

¹⁶⁸ *Ibid.*, 5.

¹⁶⁹ Amy Sawitta Lefevre, "Thai Women's Prison Highlights Need for Reform, Drug Policy Rethink," Reuters, January 26, 2018, <https://www.reuters.com/article/us-thailand-prison-idUSKBN1FE1FJ>.

¹⁷⁰ "Philippines Drugs War: UN Report Criticises 'permission to Kill' - BBC News," accessed December 6, 2020, <https://www.bbc.com/news/world-asia-52917560>.

¹⁷¹ "The Dui Hua Foundation-Dialogue – Issue 43: Bangkok Rules Address the Plight of Women in Prison," The Dui Hua Foundation, May 17, 2011, <https://duihua.org/dialogue-issue-43-bangkok-rules-address-the-plight-of-women-in-prison/>.

¹⁷² Amy Sawitta Lefevre, "Thai Women's Prison Highlights Need for Reform, Drug Policy Rethink," Reuters, January 26, 2018, <https://www.reuters.com/article/us-thailand-prison-idUSKBN1FE1FJ>.

Sub-Saharan Africa

One of the biggest problems that prison systems in Sub-Saharan African countries face is the high rate of people who are detained pre-trial. For example, in Gabon, a whopping 80.2 percent of people in prison are there pre-trial; in Benin, that figure is 75.8 percent; and in Nigeria, it's 74.3 percent.¹⁷³

Furthermore, prisons in Sub-Saharan countries suffer from poor sanitary conditions and overcrowding. According to Amnesty International, one prison in Cameroon has an occupancy rate of over 230%, and in June 2019, there were over 28,000 people incarcerated in Madagascar's prisons, which have a capacity of just over 10,000.¹⁷⁴

However, the histories of certain Sub-Saharan countries also hold great promise for possibilities regarding prison reform. In the wake of massive tragedies in their countries, the Rwandan and South African governments enacted innovative methods of confronting the perpetrators in an attempt to reach justice. As mentioned previously (in the section on Possible Solutions), in the aftermath of the Rwandan genocide in 1994, the Rwandan established a traditional community-based court system called "gacaca" in order to promote reconciliation. These courts sought to provide the family members of victims a chance to learn about the deaths of their loved ones, and to give perpetrators a chance to show remorse and ask their community for forgiveness.¹⁷⁵ (Rwanda also abolished the death penalty in 2007.)¹⁷⁶

In South Africa, in the aftermath of 43 years of apartheid, the government facilitated the Truth and Reconciliation Commission. During the seven years that the commission took place, around 2,000

¹⁷³ "Highest to Lowest - Pre-Trial Detainees / Remand Prisoners," World Prison Brief, accessed December 6, 2020, https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All.

¹⁷⁴ "Sub-Saharan States Must Protect Detainees against COVID-19," Amnesty International, accessed December 6, 2020, <https://www.amnesty.org/en/latest/campaigns/2020/05/protect-detainees-in-sub-saharan-africa/>.

¹⁷⁵ "The Justice and Reconciliation in Rwanda" (United Nations, n.d.), <https://www.un.org/en/preventgenocide/rwanda/assets/pdf/Backgrounder%20Justice%202014.pdf>.

¹⁷⁶ "Rwanda Votes to Abolish the Death Penalty," Death Penalty Information Center, June 11, 2007, <https://deathpenaltyinfo.org/news/rwanda-votes-to-abolish-the-death-penalty>.

people, perpetrators, and victims were able to share their stories of what they experienced under apartheid. Their testimony was broadcast live, and some perpetrators displayed contrition.¹⁷⁷

These two historical moments demonstrate that alternatives to punitive incarceration are possible.

Middle East and North Africa

Human rights groups around the world have criticized the prison systems of countries in the MENA region for their harsh treatment of juvenile defendants. For example, the UK-based human rights group Reprieve has campaigned against the use of the death penalty for child defendants in Saudi Arabia.¹⁷⁸

In addition, there is a high percentage of pre-trial detainees in certain countries in the MENA region. Libya has the world's highest percentage of pre-trial detainees, with 90 percent; meanwhile, 70.1 percent of people detained in Yemen are detained pre-trial.¹⁷⁹

Despite all this, some countries in the region are taking steps to tackle the problems their country's prisons face. In Egypt, the country's Parliament drafted a bill to put a six-month cap on pre-trial detention.¹⁸⁰ And in 2018, Iran amended its laws to remove the death penalty as a punishment for drug-related crimes.¹⁸¹

Latin America

Many prison systems around the world face problems that stem from overcrowding. Prison systems in Latin America are no different: in Bolivia, Guatemala, El Salvador, and Honduras, prisons'

¹⁷⁷ Magistad, Mary Kay, "South Africa's Imperfect Progress, 20 Years after the Truth & Reconciliation Commission," The World from PRX, April 6, 2017, <https://www.pri.org/stories/2017-04-06/south-africas-imperfect-progress-20-years-after-truth-reconciliation-commission>.

¹⁷⁸ "End the Death Penalty," Reprieve, accessed December 6, 2020, <https://reprieve.org/uk/campaign/death-penalty/latest/>.

¹⁷⁹ "Highest to Lowest - Pre-Trial Detainees / Remand Prisoners," World Prison Brief, accessed December 6, 2020, https://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All.

¹⁸⁰ "Global Prison Trends 2018" (Penal Reform International, n.d.), https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Global-Prison-Trends-2018_EN_WEB.pdf, 11.

¹⁸¹ Erdbrink, Thomas, "Iran Eases Death Penalty for Drug Crimes, Saving Potentially Thousands of Lives - The New York Times," January 10, 2018, <https://www.nytimes.com/2018/01/10/world/middleeast/iran-drugs-death-penalty.html>.

occupancy rates range from 200 to 400 percent of their official capacity.¹⁸² The problems that Latin American prison systems face from overcrowding have been exacerbated by COVID-19: in such cramped, overcrowded, and unsanitary spaces, huge COVID-19 outbreaks have occurred.¹⁸³

The deaths of incarcerated people from COVID-19 is especially concerning when taking into account the number of people in Latin American prisons who are being detained there pre-trial. In Argentina — a country where nearly half of all prisoners are being held on pre-trial detention¹⁸⁴ — judges have granted releases or house arrest in light of COVID-19 to about 1 percent of the prison population.¹⁸⁵



¹⁸² Vivanco, José Miguel and Muñoz, César, “How to Prevent Covid-19 Outbreaks in Latin America’s Prisons,” Human Rights Watch, May 21, 2020, <https://www.hrw.org/news/2020/05/21/how-prevent-covid-19-outbreaks-latin-americas-prisons>.

¹⁸³ Ibid.

¹⁸⁴ Vivanco, José Miguel, “Debate about Prisoners’ Release in Argentina,” Human Rights Watch, May 1, 2020, <https://www.hrw.org/news/2020/05/01/debate-about-prisoners-release-argentina>.

¹⁸⁵ Vivanco, José Miguel and Muñoz, César, “How to Prevent Covid-19 Outbreaks in Latin America’s Prisons,” Human Rights Watch, May 21, 2020, <https://www.hrw.org/news/2020/05/21/how-prevent-covid-19-outbreaks-latin-americas-prisons>.

In addition, the presence of gangs in many Latin American prison systems have created a chaotic and violent environment behind bars. As an example, as many as 65 percent of Mexico's state prisons are believed to be controlled by organized crime groups.¹⁸⁶ And in 2017, a riot caused by a clash between gangs in a Brazilian prison led to the deaths of 56 people.¹⁸⁷ Prisons in Brazil, along with prisons many other Latin American nations, utilize solitary confinement to crack down on gang activity. Their use of the practice has led to condemnation from the UN's Special Rapporteur on Torture.¹⁸⁸

For these reasons, finding alternatives to incarceration and detention will be in the best interests of delegates representing Latin American countries. Furthermore, it would be in delegates' best interest to propose clauses that tackle the problem of gangs, as that is one of the root causes of overcrowding.

Europe

Prisons in the Scandinavian countries of Norway, Sweden, and Finland are frequently hailed as models for the rest of the world to follow.¹⁸⁹ That's because Scandinavian prisons often offer health care, mental health care, drug treatment and education to people incarcerated there, choosing to focus on rehabilitation rather than incarceration.¹⁹⁰

However, that doesn't mean that European prisons are without their problems. European countries' technological advancement has raised the question of what the proper use of technology and

¹⁸⁶ "Global Prison Trends 2018" (Penal Reform International, n.d.), https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Global-Prison-Trends-2018_EN_WEB.pdf, 22.

¹⁸⁷ Cowie, Sam, "56 Killed, Many Beheaded, in Grisly Brazil Prison Riot | Latin America | Al Jazeera," Al Jazeera, January 3, 2017, <https://www.aljazeera.com/news/2017/01/03/56-killed-many-beheaded-in-grisly-brazil-prison-riot/>.

¹⁸⁸ Rosa Weber, "Ref.: CONSTITUTIONALITY OF THE DIFFERENTIATED DISCIPLINARY REGIME IN BRAZIL," United Nations Human Rights Office of the High Commissioner, June 20, 2013.

¹⁸⁹ Bhuller, Manudeep et al., "What the Rest of the World Can Learn from Norway's Prison System," World Economic Forum, March 26, 2019, <https://www.weforum.org/agenda/2019/03/incarceration-can-be-rehabilitative/>.

¹⁹⁰ Larson, Doran, "Why Scandinavian Prisons Are Superior - The Atlantic," The Atlantic, September 24, 2013, <https://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-are-superior/279949>.

artificial intelligence in criminal justice procedures ought to be: for example, could these countries' use of technology in criminal justice settings be too invasive?¹⁹¹

Moreover, life imprisonment is a relevant problem in European prisons. For example, in 2014, there were over 11,000 people sentenced to life imprisonment in France, Germany, and the United Kingdom.¹⁹² Those sentenced to life imprisonment in the UK comprised 11 percent of the prison population — a greater percentage than in the United States, the country that is the world's leader in incarceration. In addition, Black people in the UK are proportionally more likely to be in prison than those in the US, according to a 2017 study.¹⁹³

United States

Much has already been said about the United States's history and stances on prisoner rights throughout this background guide, so we won't delve into much more about the United States at this point. However, those who represent or work with the United States during committee should keep in mind that the United States leads the world in its incarceration rate, with 655 out of 100,000 people in prison, as of June 2020.¹⁹⁴ It is also the world's outlier when it comes to the length of time it keeps people incarcerated: in Western European countries, the average time spent in prison is six to seven months. In the United States, it's almost three years.¹⁹⁵

¹⁹¹ "PRI's Priorities in Europe," Penal Reform International, accessed December 6, 2020, <https://www.penalreform.org/where-we-work/europe/pris-priorities-in-europe/>.

¹⁹² "Global Prison Trends 2018" (Penal Reform International, n.d.), https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Global-Prison-Trends-2018_EN_WEB.pdf.

¹⁹³ Benjamin Kentish, "Black Britons More Likely to Be Imprisoned than Black Americans, Report Finds," The Independent, September 8, 2017, <https://www.independent.co.uk/news/uk/home-news/black-people-prison-uk-more-likely-us-lammy-review-a7935061.html>.

¹⁹⁴ "Ranking: Most Prisoners per Capita by Country 2020," Statista, June 15, 2020, <https://www.statista.com/statistics/262962/countries-with-the-most-prisoners-per-100-000-inhabitants/>.

¹⁹⁵ Bhuller, Manudeep et al., "What the Rest of the World Can Learn from Norway's Prison System," World Economic Forum, March 26, 2019, <https://www.weforum.org/agenda/2019/03/incarceration-can-be-rehabilitative/>.

Glossary

Civil Liberties: according to Merriam-Webster, “freedom from arbitrary governmental interference (as with the right of free speech) specifically by denial of governmental power and in the U.S. especially as guaranteed by the Bill of Rights.”¹⁹⁶

Incarceration: a fancy word for locking someone up in a jail or a prison.

LWOP: short for “life without parole.” Someone who is sentenced to LWOP is sent to prison for the rest of their life without the possibility of parole. (They can challenge their sentence using a variety of legal tactics, but that’s beyond the scope of this committee.)

Penological Interests: when used in a legal setting, this term means “interests that relate to the treatment (including punishment, deterrence, rehabilitation, etc.) of persons convicted of crimes,” according to a 2010 U.S. court case.¹⁹⁷ To put that into normal language, “penological interests” are the theoretical goals a prison and its administrators have for the prisoners that are incarcerated there: perhaps it’s to punish them, or to rehabilitate them.

Pre-trial Detention: when someone accused of a crime is detained, or held in a jail, before their trial has taken place. This can be because they failed to post bail, or because they were denied pretrial release.

Pre-trial Justice: according to the Pretrial Justice Institute, pre-trial justice is “the part of the criminal justice system that begins when a person comes into contact with law enforcement (or the police) and ends when any resulting charges are resolved—usually through a dismissal, a plea, or a trial.”¹⁹⁸ In the context of this committee, it can mean guaranteeing somebody’s pre-trial access to a lawyer,

¹⁹⁶ “Definition of CIVIL LIBERTY,” accessed December 6, 2020, <https://www.merriam-webster.com/dictionary/civil+liberty>.

¹⁹⁷ “Penological Interests Law and Legal Definition | USLegal, Inc.,” accessed December 6, 2020, <https://definitions.uslegal.com/p/penological-interests/>.

¹⁹⁸ “What Is Pretrial Justice?,” *Pretrial Justice Institute* (blog), accessed December 6, 2020, <https://www.pretrial.org/what-is-pretrial-justice/>.

or perhaps making sure that they are treated in their initial contact with law enforcement in a humane way.

Restorative Justice: a form of justice that focuses on repairing trust and ties between the responsible party, the people harmed, and the community at large. According to restorativejustice.org, restorative justice has four corner posts: “inclusion of all parties,” “encountering the other side,” “making amends for the harm,” and “reintegration of the parties into their communities.”¹⁹⁹ Accountability and a process of healing are the crux of restorative justice.

Solitary Confinement: the United Nations’ definition of solitary confinement is “the confinement of prisoners for 22 hours or more a day without meaningful human contact.”²⁰⁰ Other institutions or users of the term may use the term with a slightly different definition, as there is no universally agreed-upon definition of the word.

¹⁹⁹ “Lesson 1: What Is Restorative Justice?” Restorative Justice, accessed December 6, 2020, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/>.

²⁰⁰ “OHCHR | United States: Prolonged Solitary Confinement Amounts to Psychological Torture, Says UN Expert,” February 28, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25633>.

APPENDIX

US Prisoner Rights in the 18th and 19th centuries

For most of human history, imprisonment has not been used as a form of punishment in and of itself. In fact, imprisonment did not become the main form of punishment that people were sentenced to post-trial until the 18th century in Europe and until the 19th century in the United States.²⁰¹ Before this time, imprisonment was purely used as pretrial detention and not as a punishment itself; people who were accused of crimes would be detained in holding cells until they could stand judgment and possibly be punished. Prior to the 19th century in the United States, those who were thought of as wrongdoers were punished with such methods as banishment, forced labour in galleys, transportation, and appropriation of the property they owned.²⁰² These methods of pre-prison punishment tended to have one thing in common: they were, in essence, public spectacle.²⁰³ Particularly brutal forms of punishment, such as execution and public torture, were intended to be theatrically savage and discourage any onlookers in the audience from potentially committing any crimes themselves.²⁰⁴

In the 19th century in the US, the institution known as the penitentiary began to become popular. Two competing systems of penitentiaries represented slightly different ideologies in how administrators believed prisoners should be treated. One such system was known as the Pennsylvania system, and was named that because it was first used in Pennsylvania's Walnut Street Jail (the first state penitentiary in the US). The system consisted of prisoners living in single cells where they "lived, ate, worked, read the Bible (if, indeed they were literate), and supposedly reflected and repented."²⁰⁵ Meanwhile, the Auburn system (developed in Auburn, New York) was largely similar to the Pennsylvania system, in that prisoners were held in "total isolation, silence, and isolation", but undertook prison labour in the presence of others.²⁰⁶

²⁰¹ Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), p. 42.

²⁰² *Ibid.*

²⁰³ *Ibid.*, p. 41.

²⁰⁴ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1977), p. 9.

²⁰⁵ Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), p. 47.

²⁰⁶ *Ibid.*

Both these systems were intended to reform prisons and rehabilitate prisoners, but since the moment these systems were introduced, there was criticism of them. Prison reformers argued that the penitentiary's culture of silence and solitude dealt more harm to prisoners psychologically than improved their situation. After visiting Eastern Penitentiary in 1842, the well-known English novelist Charles Dickens wrote that he believed the system of "rigid, strict, and hopeless solitary confinement....to be cruel and wrong."²⁰⁷

In the late 19th century, a couple of court decisions solidified the second-class legal status of prisoners. In the 1866 decision *Pervear v. Massachusetts*, the Supreme Court ruled unanimously that prisoners have no constitutional rights, not even the right to be shielded from "cruel and unusual punishment," as stated in the Eighth Amendment.²⁰⁸ The *Pervear* decision was not overruled until 1963. In addition, in the 1871 decision *Ruffin v. Commonwealth*, the Virginia Supreme Court forcefully declared that prisoners were "slaves of the state."²⁰⁹

At the close of the Civil War, the Thirteenth Amendment to the U.S. Constitution was ratified in 1865, and prohibited "slavery" and "involuntary servitude" *except* for those convicted of a crime. Thus, a system known as "convict leasing," where Southern states leased prisoners to do work for private railways, mines, and large plantations, was born.²¹⁰ This system disproportionately impacted Black people, many of whom were formerly enslaved people. The "Black Codes" that Southern states passed post-Civil War trapped many Black people into the convict leasing system; for example, in several states, it was illegal for a Black man to change jobs without the approval of his employer.²¹¹ Black people could also be convicted of petty offenses like vagrancy and be sentenced to prison labor because of that. Because private companies could simply purchase another prisoner at a low price if one died, there was little incentive for them to provide humane living conditions, and

²⁰⁷ Quoted in Davis, p. 48.

²⁰⁸ "Pervear v. The Commonwealth, 72 U.S. 475 (1866)," Justia Law, n.d., <https://supreme.justia.com/cases/federal/us/72/475/>.

²⁰⁹ Paul Wright, "Slaves of the State | Prison Legal News," May 15, 1994, <https://www.prisonlegalnews.org/news/1994/may/15/slaves-of-the-state/>.

²¹⁰ "Convict Leasing," Equal Justice Initiative, November 1, 2013, <https://eji.org/news/history-racial-injustice-convict-leasing/>.

²¹¹ "Timeline of Slavery in America | Slavery by Another Name | PBS," PBS, n.d., <http://www.pbs.org/tpt/slavery-by-another-name/slavery-timeline/>.

so, for the most part, conditions were extremely harsh. It was not until 1928 when Alabama became the last state to formally outlaw convict leasing.²¹²

²¹² Robert Longley, "Was Convict Leasing Just Legalized Enslavement?," ThoughtCo, January 9, 2020, <https://www.thoughtco.com/convict-leasing-4160457>.

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