Proceedings

of the
Fourth International Conference
on
Human Rights and Prison Reform

International C.U.R.E.
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Proceedings

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on

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The Agenda of the 4th CURE International Conference.

Twelve panels discussed the application of major human rights documents to people in prison, prison operations, justice, and reform of criminal justice systems. Topics included the following:

1. The Universal Declaration of Human Rights
2. The International Covenant on Civil and Political Rights, and

   The International Covenant on Economic, Social and Cultural Rights
3. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
4. Optional Protocol to the Convention Against Torture (OPCAT)
5. The Convention on the Rights of the Child
6. The Convention on the Elimination of all Forms of Discrimination against Women
7. The Convention on the Rights of Migrant Workers
8. The International Convention on the Elimination of All Forms of Racial Discrimination
9. The Second Protocol on the Death Penalty
10. Standard Minimum Rules for the Treatment of Prisoners
11. Other UN Instruments for Criminal Justice Reform
12. OPCAT Signing, Ratification, and Implementation

For these Abridged Proceedings of the conference, we were unable to obtain copies of all the presentations and discussions made at the conference. We have, nevertheless, been able to preserve some of the major presentations and the thrust of prison reform that was generated at this extraordinary international conference, attended by 75 persons from 20 countries on 5 continents.

The Conference was co-sponsored by the Jane Addams College of Social Work, University of Illinois at Chicago.

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The International Bill of Human Rights
Proclaimed December 1948

Section 35. Principle #5: 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, and where the State concerned is a party, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

35. Basic Principles for the Treatment of Prisoners
Adopted and proclaimed 1990

Section 36. Use of Terms, Principle #6: No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Footnote: *The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

36. Body of Principles for the Protection of
All Persons under Any Form of Detention or Imprisonment
Adopted December 1988

Human Rights

Charles Sullivan, Executive Director of International CURE

The Universal Declaration of Human Rights

This document has been called the bill of rights for the world. *The Universal Declaration on Human Rights* was passed by the United Nations on December 10, 1948. The vote was 48-0 with eight countries abstaining. Thus, no country voted against it.

Eleanor Roosevelt, the widow of United States President Franklin Roosevelt, was the chair of the Human Rights Committee that wrote the *Declaration*. She called it the "Magna Charta for all Mankind," and pointed out that human rights are possessed by ALL human beings.

Although the *Universal Declaration* has only 30 articles, many concern criminal justice. These include that everyone is equal before the law and has a right to a fair trial. Also, there must be protection against arbitrary arrest. And, slavery, torture and ill-treatment are never permitted.

In fact, human rights limit the power of the government. For example, the government cannot pass a law that increases the prison sentence for the crime AFTER the person has already been sentenced. However, if a law is passed that is shorter than the sentence the person received, he or she will have the sentence SHORTENED to this change.

Thus, the role of the government is to promote human rights, not fight against them. The human rights document also challenges state sovereignty in that if a country is abusing its people, the other countries as a collective must intervene.

These civil and political rights are in the early articles of the *Declaration.* They end with *Article 21* which says that everyone has the right to vote. This universal suffrage article has been called "a revolution within a revolution."

After *Article 21*, there are listed economic articles that we should also apply to people in prison. These include the right to a living, family, saving wage and the right to even join a trade union while in prison.

Overall, there is also a right to a standard of living that includes food, clothing, housing and medical care that is adequate for a person's health.

Finally, everyone has the right to education. And education shall be free at the elementary stage. Even higher education or college should be accessible to all on the basis of merit. Again, the word "everyone" includes those incarcerated.

Over the years, *The Universal Declaration on Human Rights* has become more important as international law. Although it is not technically a legal document, it is considered today a legal as much as a moral document.

Thus, it should be applied to the people in prison in every country as much legally as morally.

Covenants

The Universal Declaration on Human Rights was passed by the United Nations in 1948. It is technically a moral document. Thus, it was to be followed by a legal document that could be used in courts against countries that violated these human rights.

However, it was decided to write two documents rather than one. This is because countries like the United States were interested only in the political and civil rights given in *The Declaration* while countries like Russia were interested in only the economic rights in the document.

Thus, 18 years later, the United Nations passed in January, 1976, *The International Covenant on Economic, Social and Cultural Rights*. Two months later, *The International Covenant on Civil and Political Rights* was passed.

The first *Covenant* is not applied to people in prison as it should be. But, it clearly states that everyone has such legal rights as education, work, adequate health, and cultural life. *Article 15* "recognizes the right of everyone ... to take part in cultural life."

The second *Covenant* which is on civil and political rights has very important articles concerning absolute prohibitions on torture and the death penalty being given to children and pregnant women. Also, due process must be given to those charged with crimes.

Finally, *Article 10* states that "the penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation."

And *Article 25* gives the right to vote to all, including prisoners.

A final point needs to be made in regard to the enforcement of these Covenants. Countries that have ratified the *Civil and Political Rights Covenant* must file "reports on the measures they have adopted which give effect to the rights recognized." Countries that have ratified the *Covenant on Economic, Social and Cultural Rights* also must submit reports but this is to be on the progress they are making. In other words, the *Civil and Political Covenant* must be implemented NOW while the *Economic Covenant* is a WORK IN PROGRESS.

Conference Panel on Five Major Conventions

In our presentations at this 2009 conference, the first panel used *The Universal Declaration on Human Rights*, a moral document, to bring about prison reform. The second panel used the two Covenants that are legal documents based on *The Universal Declaration* to bring about prison reform.

The third panel is the first of five major conventions that are based on *The Universal Declaration* and *The Covenant on Civil and Political Rights* to bring about prison reform.

Torture

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was passed by the United Nations in 1984. I think it is the most important prison reform document of the five major conventions considered during this conference.

Also, please note that not only is torture forbidden, but also cruel, inhuman or degrading treatment or punishment. The word "or" is used, not "and". Any one of these types of treatment or punishment is absolutely prohibited. How do they differ? The European Court of Human rights has stated that the distinction between "torture" and "inhuman or degrading punishment" derives principally from a "difference in the intensity of the suffering inflicted."

Rape is torture just as much as is the use of high pressure water. Also, being paraded naked may not be torture, but it is certainly degrading treatment.

When CURE started in Texas almost forty years ago, a person could be placed in solitary confinement in the dark for weeks. A doctor was called only if the person lost one-fourth or 25% of his weight. This is torture as well as cruel and inhuman treatment and punishment.

Is solitary confinement *per se* torture? What about deprivation of sleep? Beating with fists and boots? Using a bull whip like a jail in Cameroon does?

The answers to these questions were addressed by our panelists.

Children

The second of the five major conventions that can be used to bring about prison reform is *The Convention on the Rights of the Child.*

If the *Torture Convention* is the most important of the five, the *Child Convention* is the most supportive. Only the United States and Somalia have yet to ratify this Convention since the United Nations approve it in 1990.

The best interests of the child is the primary consideration of the Convention. Also, there shall be no discrimination in regard to children and it is the duty of the countries (or states as the countries are called) to facilitate family re-unification. These and other effects of this document in regard to the criminal justice system were addressed by our panelists.

Like all the legal documents we have previously addressed, there must be periodic reports submitted by the states to the United Nations.

This has been an opportunity to include our concerns in regard to children incarcerated, and, if not in prison, their rights to visit their parents if they are in prison.

Women

The Convention on the Elimination of All Forms of Discrimination Against Women was passed by the United Nations in 1979. It provides equal rights for women in all fields. This includes political, economic, social, cultural, civil and health fields.

Of course, all these fields have a great impact on women in prison. For example, certainly this last field of health is especially a most important right for women in prison. The United States in the last year established policies to stop the use of shackling or body chains being placed on a female prisoner when she is giving birth.

Also, in regard to these fields, all countries that ratify this document agree to pursue immediately "all appropriate means" to eliminate discrimination.

Reports on this progress must be submitted to the United Nations at least every four years. This again is an opportunity for you to make sure the plight of women prisoners are included in the report. This document is considered to be the single most important document speaking for the human rights of women that has ever been written.

Migrants

The International Convention on the Protection of the Rights of All Migrant workers and Members of Their Families is the newest of the five in that it was passed by the United Nations and entered into force only in 2003. It is also the longest document.

As we addressed the documents on the child, women and racism, it is most appropriate to talk about this document. This is because racism, sexism and religious bigotry have contributed to the flood of refugees.

Most refugees, thus, are women and children. As a remedy, this *Migrants Document* gives protection to all people whether they are in another country legally or illegally. This includes due process for those charged with crimes and found guilty and in prison. In fact, the number of people now serving prison sentences in another country has increased dramatically in the last few years. For example, almost one third of the people in prison in the Federal Bureau of Prisons in the United States are from other countries.

This document has brought human rights of migrants from the margins to the mainstream. It is certainly a starting point for helping this most forgotten and vulnerable population.

Racism

The International Convention on the Elimination of all Forms of Racial Discrimination was passed relatively early by the United Nations in 1969. Since then, it has been ratified by most countries. It is implemented by a reporting procedure, inter-state complaints and individual communications.

Also, it concerns not just public institutions but also private ones too. Finally, affirmative action or giving preference to minorities where they are woefully absent is NOT considered reverse-racism if it is only temporary. It ends when the minorities are covered.

Minimum Rules

The Standard Minimum Rules for the Treatment of Prisoners has a great history. It was written in 1955 by the Prisoners of War in World War II. This was at the first meeting of the United Nations Crime Congress which is held every five years. In fact, the next congress will be in Brazil in 2010. One of the items on this 2010 Congress will be a revision of these minimum rules. Although revision is needed, most of the rules are very relevant today, as addressed by the panelists.

These rules have more moral weight than legal. I imagine they have been used in litigation in countries, but they are only recommendations. They are not like the two covenants and five major documents we have considered. If a country ratifies these seven documents, they are obligated to make reports on implementation.

These seven documents only address prison reform indirectly while *The Standard Minimum Rules* apply directly to prisons.

Rule # 61 (Guiding Principles): The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

Rule # 77 (Education and Recreation): (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration. (2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

–Human Rights in the Administration of Justice
Protection of Persons Subjected to Detention or Imprisonment
Standard Minimum Rules for the Treatment of Prisoners
Approved in July 1957 and May 1977

The Juvenile Justice System,

a Key to Human Security Policy Reform[1]

Bernard Boëton, Terre des hommes Foundation, Switzerland

> "Today, development, security and human rights go hand in hand; no one of them can advance very far without the other two. Indeed, anyone who speaks forcefully for human rights but does nothing about human security and human development – or vice versa – undermines both his credibility and his cause. So let us speak with one voice on all three issues, and let us work to ensure that freedom from want, freedom from fear and freedom to live in dignity carry real meaning for those most in need."[2]

From Simplistic Representations to Realities

In a context of globalisation, and in particular with the liberalisation of global economies, there has been a trend towards a reduced role for the public sector as the primary vehicle for the delivery of national policy. At the same time, states' emphasis on providing 'human security' is being interpreted from a strictly security-based perspective, which risks criminalising parts of society already living in exclusion. Often driven by public opinion, such an approach risks ignoring the vital role of the juvenile justice system (functioning based on international norms and standards), not only for children's security, but also for the security of the population as a whole.

Many countries adopt short-sighted policies that are aimed at achieving immediate political gain, rather than investing over the long-term in preventive approaches. In other words, 'punish quickly rather than educate slowly'. To varying degrees, the marginalisation of the juvenile justice system is a universal phenomenon and, even in countries with the economic means to support alternative approaches to prison sentencing, we see 'curfews' imposed in urban areas, or the announcement of measures (ultimately cancelled) for the detection of children 'predisposed to delinquency' from nursery school age (France). In the 1960s, marginal and anti-establishment behaviour was seen as an inevitable, indeed worthwhile, symptom of generational change: today's rhetoric revolves around the 'antisocial' behaviour of minors (United Kingdom). This has gone as far as the Swiss government's approval of the sale of 'Mosquito' devices to homeowners: these devices emit ultrasound waves which can only be heard by animals and youths under the age of 25, and are used to deter the latter.

Associated with urbanisation, an increase in juvenile delinquency tends to be a symptom of social exclusion: for many families life is about survival and as such their children are expected to contribute (if the family link has been maintained), or to take care of themselves (if the family link has been broken). More than half of the world's population now lives in cities, with the majority of economic migrants having moved away from rural areas because of their livelihoods no longer being guaranteed in rural environments where traditional forms of community solidarity have broken down. This psychology of survival can blur the perception that juveniles have of the line between legality and illegality, especially where these youth are physically or psychologically restricted and stressed.

Efforts to combat juvenile delinquency will often be reflected by authorities introducing repressive legislation and in a hardening of attitudes among law enforcement and judicial officers. Resulting actions may include: reduction of the age of criminal responsibility; increase in the length of custodial sentences for minors (who are sometimes detained with adults – prison being acknowledged as 'the school of crime'; dramatic 'round-up' actions or crackdown operations; the criminalisation of vagrancy and begging; and the creation of educational detention centres (presented as alternatives to prison, but whose conditions of detention are often equivalent to those of prison).

In some particularly underprivileged countries, the judicial system is administered in a both hasty and lax manner: for a simple case of cattle rustling, juveniles are remanded in custody for lengthy periods without speedy trial, decision or sentence, and even forgotten about. Holding public office does not allow police or judicial officers to act – or not to act – in total impunity and illegality, or in ways that are an abuse of their power and position. Good governance pre-supposes that public actors can be monitored, held accountable and, if necessary, sanctioned.

In every country of the world, regardless of its level of economic development, policy-makers come up against the problem of juvenile delinquency. The idea of dealing with the problem through a hard-line or repressive approach is often deemed as being the most expeditive and effective in satisfying the immediate demands and concerns of public opinion. Such demands are often dictated by the media, who at times seem quite willing to deal in statistics that can be easily manipulated and that the public is unlikely to fully understand.

The distinction between the delinquency of youths in rich countries that are testing limits, and the delinquency of survival of youths in poor countries is no longer always relevant. Family break-up is no less common in rich countries than in poor countries, although the reasons and cultural and traditional contexts may differ greatly. The psychological abandonment of children in some rich families is indeed equal to the physical and material abandonment experienced by children of poor families.

Differences between rich and poor countries lie not only in the resources available to the state to implement alternatives to detention but also in the influence and capacity of civil society stakeholders (associations, non-governmental organisations, etc.) to influence policy. However, there are also significant risks in the state progressively offloading parts of its responsibility to private welfare and charitable associations – often operating with private funding – particularly in relation to entrusting them with the education and rehabilitation of juvenile offenders and their reintegration into the community.

The frequently cited argument of budgetary constraints is both true and false. True, because juvenile justice is always the poor relation when it comes to government spending in the justice system; but false, because the implementation of sound co-operation between trained professionals can yield results even with small budgets. Added to this is the fact that, in many countries, the economic insecurity of a significant part of the population, sometimes the majority, can be linked to issues such as state withdrawal and the privatisation of public services, sometimes under pressure from international financial institutions, but which can ultimately result in increases in juvenile delinquency.

Aside from the legal requirement to comply with international norms and standards, states must realise that for the overwhelming majority of first time minor offenders the cost effectiveness of social work and education in an open environment is far more favourable than investing in costly penitentiary institutions, despite the latter having a higher profile and as such a more appealing aspect concerning public opinion. In some countries, it would be worthwhile comparing the price of one day of juvenile detention with the cost of a day in an average hotel in the same city.

In addition, the construction and maintenance of correctional facilities may have the opposite effect of the desired outcome. While detention conditions may improve momentarily, there is a risk of an increase in custodial sentencing and of this punishment being applied for more minor crimes. Indeed, where the private sector is involved, if new facilities are ‘put on the market’, they will have to be filled to make them profitable.

It should also be noted that in a ‘globalised’ world, the growth of the migratory phenomenon, internal or international, legal or illegal, places juveniles at extreme risk, sometimes encouraged by their own families, sometimes coerced by traffickers in order to commit illegal or criminal activities. Delinquency among foreign juveniles often leads to the application of marginal, even unlawful, methods in the host country, in a ‘two weights, two measures’ approach in breach of international standards (including the United Nations Convention on the Rights of the Child). The primary obligation of protecting these children, cut-off from their families, is often neglected in favour of arbitrary proceedings, the meanings of which are often not understood by the minors involved.

Finally, major changes affecting the way in which internal and international armed conflicts are conducted have exacerbated the phenomenon of children recruited into armed forces, militia, guerrilla movements, or other, more or less spontaneously constituted, armed groups. The administration of juvenile justice can become all the more problematic as states, faced with internal strife, impose exceptional legal regimes (as is the case for Palestinian children in Israel), or a sort of ‘military law’, which waives the requirement to handle juveniles according to the standard criminal code. However, what is clear is that the actual recruitment itself is a form of exploitation and an abuse of power – more often than not under duress – which requires that the child be treated first and foremost as a victim before being considered as a criminal, regardless of the acts committed in combat.

Promoting State Sovereignty and Security.

Generally, a state's responsibility for human security within the territories under its jurisdiction must be perceived as extending to the security of all persons within those territories, and not simply to the security of the state and its institutions. A state's sovereignty cannot be considered as referring exclusively to the security of its own existence and its own governance. Equally, a state that is not in a position to ensure a minimum of security and respect for the human rights of its children, including those responsible for misdemeanors and petty crime, is not deserving of recognition as sovereign on its soil. Given that every year 120 to 130 million children are born into the world (and as an aside, it should be noted that a third have no civil registration at birth), and in light of the relative drop in the birth rate, including in some poor countries, we can estimate that between three and four billion children will be born in the next 50 years. Forty-five percent of today's global population is under 18. The issue of childhood does in fact concern the rights of almost half of humanity – those who will be the humanity of tomorrow.

As such, justice is the very expression of state sovereignty. Neither cultural forces nor foreign interference justify the systematic detention of juvenile offenders through the practice of preventive detention for long durations and under inhumane living conditions which would not even be tolerated for adults.

Juvenile delinquents are also juveniles at risk, and the juvenile justice system must be as much about justice based on protection as it is about justice based on sanctions. Juvenile justice is not a marginal justice: it does not consist of applying 'preferential' measures or making 'humanitarian exceptions' on the pretext that juvenile delinquency is a social, not a legal, problem, or that it is simply a noble principle serving only to conceal arbitrary procedures and practices. The administration of juvenile justice has for decades been subject to international standards, with the requirement that they be applied to national laws and procedures, and which as such require the police, judiciary and correction services to adopt a primarily educational approach to juvenile justice rather than a repressive approach.

The protection of the rights of the child is easily and widely accepted when dealing with child victims (of traffickers, or violence in any form), but it is much more difficult when dealing with child offenders.

The Copenhagen Declaration on Social Development from the 1995 World Summit for Social Development[3] (in which 115 countries participated) provided a vision for social development based on the promotion of social progress, justice and the betterment of the human condition, based on full participation by all. As such, children should be considered as participants and beneficiaries of an approach designed in the higher interest of their future and that of the society in which they live. Social action is not simply concerned with managing the needs of a population deemed to be marginal, abandoned, and left reliant on the initiative of private social and humanitarian associations. While the state cannot be expected to be all-providing, and private stakeholders have their place, the state must, as a minimum, guarantee the conditions of equality of opportunity and access to justice for all. Fairness in the implementation of human rights is one of the foundations of human security.

The United Nations Convention on the Rights of the Child (the 'Convention') defines a child as any human being below the age of 18 years. We should add in respect of this age-based definition that the child is a human being in his or her own right (and not in the 'ante-chamber' of humanity). The child's dignity is equal to that of every other human being, but the child has relative capacities of perception (in relation to the consequences of his or her actions), expression (limited language proficiency), and defence (both physical and psychological). This definition, which underpins the existence of the juvenile justice system and the international norms and standards in this field, also underscores the priority of a restorative approach over a punitive approach. Educational work with the juvenile, and social work with his/her family and community, may perhaps only obtain a 50 percent success rate, but a purely repressive approach (namely via the deprivation of liberty) guarantees almost 100 percent failure.

Even in cases of deprivation of liberty, this does abrogate responsibility for the protection of the juvenile's rights. There is no such thing as human security without legal and ethical references to international human rights instruments: family contact, respect of physical and psychological integrity, respect for privacy at all stages of the proceedings, the right to information, the right to practice a religion, etc.

Debates over juvenile justice have forever focused on the choice between 'retributive' or 'restorative justice' (repression or education). Each individual develops his or her own opinion, inclination and argument according to their perception, experience or role. Ministries of the interior, justice and defence, as well as legislators, may tend to take a 'repressive' stance, while the Ministries of health, social affairs and family, and many representatives of civil society promote the 'educational' approach. Advocates of retributive justice are persuaded by the effectiveness of punishments that deprive people of their liberty – although the more skeptical take refuge in the argument of 'a shortage of resources' to justify custodial sentencing – while claiming to regret it. Advocates of restorative justice believe in the importance of removing the juvenile offender from judicial proceedings – although in the absence of real means for an education-based policy, juveniles are faced with police and judicial practices of which they understand little and during which they are subject to arbitrary decisions by untrained personnel, without the means to defend themselves or exercise their rights (with which they themselves are often not familiar).

Under these circumstances, it becomes apparent that the most serious breaches of the rights of juvenile offenders do not necessarily stem from malicious actions of any kind but more often than not from widespread ignorance over basic standards and procedures, and a lack of training on the part of the parties concerned.

The very concept of human security alludes to a restorative-based approach. Good governance, with a view to securing democratic progress, implies that the state, which is at once the source and the guarantor of human rights, must strive to inform public opinion on child rights, and deal with children in line with international norms and standards, including using deprivation of liberty only as a measure of last resort. Any decision, or punitive measure, that compounds the child's exclusion from the community is unlikely to succeed.

In what way is being deprived of liberty a lesson in liberty? (J. P. Rosenczweig).

Restorative-based approaches are all the more valid in that, in almost all countries and cultures, tradition and custom have at some stage been based on mediation and reconciliation when faced with breaches of its rules by minors. When launching a project in a country, it is important to use the national laws in force, provided they do not conflict with international principles. It is important to first work with what is in place before trying to change things – but, gaps in the law should not be used as a pretext or reason for failing to innovate in terms of alternatives to the imprisonment of minors. Indeed, national law invariably offers the possibility of developing alternative measures to detention, even if only through a word or a phrase, and can also be inspired by existing, relevant local practices or customs. This does not mean that all traditional punishments, notably corporal punishment, are still acceptable today. The pressure of public opinion is all too often given as a pretext for immediate recourse to a repressive approach, in particular for minor offences committed by first-time offenders. However, the Ministry of Justice always has the option of putting in place pilot projects on a test basis in order to first demonstrate the benefits of pursuing alternatives before proposing amendments to the law governing juvenile delinquency.

Tried and Tested Good Practices.

The Convention excludes the imposition of capital punishment or life imprisonment without the possibility of release for offences committed by persons under 18 years (Article 37.a), yet such sentences persist in some states that have ratified the Convention.

At all stages of the juvenile justice process, children who are alleged to have committed offences are entitled to be treated 'in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society' (Article 40.1). Children have the right to be protected from all forms of torture and cruel, inhuman or degrading treatment or punishment (Article 37.a) and any other form of abuse (Article 19).

Street children are among the most vulnerable victims of the most extreme forms of violence, including extrajudicial or summary execution, in many countries. Homeless children are particularly vulnerable to such violence, though children working in the streets are also at great risk even if they are still living with their families. Violence against

this group of children represents a particularly egregious violation of their rights (Articles 6 and 37, among others), as it follows upon the failure of the state to offer protection and care to children whose rights are already under attack.[4]

Juvenile justice is not 'compassionate' justice because it concerns children. Being a child does not preclude one's entitlement to benefit from the rule of law and the safeguards it provides: a child has the right of defence, the right to the presumption of innocence, the right of appeal, etc. The juvenile justice system also needs to recognise its responsibilities, not just towards the child offender, but also to the child witness and child victim. A distinction must be made between:

- A child in conflict with the law, who will be dealt with by the criminal justice system.
- A child at risk, who will be of concern for welfare services and not the courts.
- A child victim or witness, who must benefit from protection measures.

Good administration of the juvenile justice system implies the specialisation of police, judiciary, educational and welfare staff at every stage of proceedings, trained in the rules regarding children's rights, as well as the implementation of basic rules concerning their protection against any arbitrary exercise of power and violence. The notion of juvenile justice being restorative pre-supposes the application of some fundamental principles.

- Capital punishment and life imprisonment must be permanently and universally abolished for offenders who were minors at the time of events.
- The child must be heard in an appropriate manner, i.e. in accordance with his or her age and maturity, and this includes the presumption of innocence.
- From the initial questioning stage, the approach must be instructional, based on the juvenile's understanding of the consequences of his or her actions and the sanctions applied to him or her.
- The idea of conflict resolution should guide all proceedings, where possible via the use of reparations to compensate the victim. A balance must be sought between the victim's claims and the juvenile offender's situation as, in practice, one is often more compassionate towards the person having suffered the wrongdoing than towards the person who committed it.
- In all cases, educational, non-custodial sanctions must be the rule, and detention must remain the exception: preventive detention is a procedural act only and must on no account be selected as an immediate sanction.
- In the case of misdemeanours or crimes committed by juveniles with a group of adults, the separation of proceedings is a compulsory legal obligation, from the beginning of proceedings until the conclusion of the measures or sanctions.

Experience shows that the training of public actors in juvenile justice must be multi-disciplinary: juvenile justice can only progress if the respective professions involved know their respective legal responsibilities, limitations and possibilities. This approach also avoids inopportune interference in the other party's actions: the lawyer must not be expected to play the role of the social worker and vice versa, etc.

Among the parties, the judge is one of the key persons for the smooth running of the juvenile justice system. All of the other actors are subject to his or her decisions and supervision from the start of proceedings (where there was no possibility of out-of-court settlement) until the point at which the sanction has been fully enforced. Actors in the juvenile justice system cannot therefore receive training without the active presence of judges. However, judges are notoriously reluctant to undertake training programmes alongside other professionals such as police officers, educators and social workers, but an alternative approach can be to invite them as trainers. Experience shows that once the various professions have gained mutual recognition and respect, they are better placed to identify appropriate solutions, even if temporary, which offer more effective and less costly alternatives to the routine recourse to strictly repressive measures.

Judicial proceedings must be conducted in such a way as to avoid victimisation, trauma or discrimination of the offender (and equally victims and witnesses). As such, any juvenile questioned by the authorities must be provided the following opportunities and guarantees, among others:

- To be judged for offences committed, and not according to the demands of, or under pressure from, victims or public opinion.
- Contact with his or her family, where possible.
- Rapid recourse to free legal aid and a lawyer.
- To be informed of the complaints mechanisms available in case of violation of his/her integrity during detention.
- To be briefed and guided throughout proceedings with respect, benevolence and sensitivity, in a language which he/she understands (from questioning during the investigation, to hearings and counsel's address during the trial, and during disciplinary proceedings during detention, etc.).
- To be monitored by a social worker able to establish a background check that the judge can use to determine appropriate educational or punitive measures (or combination there of) in accordance with both the personal situation of the juvenile and the seriousness of the offence.
- That legal periods of custody and preventive detention are respected.

Alternatives to detention may be applied at any stage of proceedings, from initial questioning, until the end of the application of punitive measures. Furthermore, any decision and any punitive measure applied to a minor must be considered reversible at any given moment, under the supervision of the juvenile judge, according to the child's development, his or her behaviour, and according to the outcome of the educational follow-up he or she receives.

Alternatives are at once a means of conflict resolution, restoring social harmony, repairing the harm suffered, improving public safety and promoting respect for child rights. Alternatives may be introduced in some of the following ways.

- Pre-trial: diversion by means of out-of-court settlement. Depending on the country, police officers may be empowered to settle the problem without initiating legal proceedings.
- Pre-sentencing: legal proceedings are suspended while an alternative is sought, and if this is successful the judge dismisses the case.
- Post-trial: either the convicted youth is not sentenced, or the youth is sentenced but the sentence is not applied, in order to find alternatives.

The applicable alternatives must be appropriate for the age and maturity of the juvenile, and match the seriousness of the offences committed. In the case of minor offences committed by first-time offenders, some alternatives avoid the case being referred to the legal authorities, allowing the child to recognise the consequences of his or her actions and make the parents aware of their responsibilities, but without a criminal record being created. The principle of diversion pre-supposes the consent of the minor and his/her parents or legal guardians, and a restorative approach to justice based on relationships (not the offence), reparation (not the sanction), restoration of social ties (not deterrence), consideration of the victim, and a sense of personal responsibility.

Diversion aims to break the vicious circle of stigmatisation, violence, humiliation and the breakdown of social bonds. It circumvents the 'school of crime' (i.e. detention facilities), reduces the risk of recidivism, avoids legal expenses, and fosters integration rather than exclusion from the social context. Contrary to popular opinion, a large majority of first-time offenders who benefit from these alternatives do not re-offend. Measures include admonition, reprimand or warning (for the juvenile and the parents), conciliation or informal mediation, community service, probation, or supervision by welfare or education services. All these procedures suppose that the actors involved are trained in

these practices and that the two parties are in agreement (recognition of the deed by the juvenile and the victim's consent).

Other diversionary approaches exist, even once a case has been referred to the prosecutor.

• Release on probation and re-evaluation by the social worker in association with the family – this procedure being subject to a social report submitted to the judge within a period set by the latter.

• Placement in a non-custodial institution with a socio-educational function, when the age, circumstances or the safety of the juvenile demand or permit it.

• Criminal mediation, initiated by the judge – this can only take place if the victim and the perpetrator of the criminal offence are in agreement. It respects the rights of complainants and alleged perpetrators who may be advised or assisted by a lawyer or other appropriate person of their choosing. It provides a solution to the criminal dispute in a way that is flexible, rapid and simple, by seeking amicable solutions. It enables communication to be restored between the disputing parties and thus moves towards social appeasement.

Community service – performing work to benefit the community, the village or district – is a feature of many customs and traditions. Its use must not be an occasion to exploit the work capacity of a child but, to the contrary, should give him or her an opportunity to realise his or her potential within the community while benefiting from a learning opportunity.

The Need for National and Local Indicators.

In many countries, the statistical recording of the number and conditions of juveniles who are detained or placed in an institution is gravely lacking. Indeed at times, juveniles are subject to judicial proceedings without a case file, or their files are mislaid. In some countries, statistics only exist for the capital city, and perhaps a handful of major towns, and ignore locally applied procedures and methods, about which no-one really knows the extent of arbitrary practices used against juvenile offenders.

The United Nations Office on Drugs and Crime/United Nations Children's Fund Manual for the Measurement of Juvenile Justice Indicators[5] introduces fifteen juvenile justice indicators to assist local and national officials in establishing sustainable information systems to monitor the situation of children in conflict with the law. The indicators are grouped and presented as follows.

Quantitative Indicators:

1) Number of children arrested during a 12-month period

2) Number of children in detention

3) Number of children in pre-sentence detention

4) Time spent by children in detention before sentencing

5) Time spent by children in detention after sentencing

6) Number of child deaths in detention during a 12-month period

7) Percentage of children in detention not wholly separated from adults

8) Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member

9) Percentage of children sentenced receiving a custodial sentence

10) Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme

11) Percentage of children released from detention receiving aftercare

Policy Indicators:

12) Existence of a system guaranteeing regular independent inspection of places of detention

13) Existence of a complaints system for children in detention

14) Existence of a specialised juvenile justice system

15) Existence of a national plan for the prevention of child involvement in crime

A combined analysis of the fifteen indicators is considered necessary for the assessment of the situation of children in conflict with the law. However, in situations where it may not be possible to measure all fifteen, a number of 'core' indicators are identified as priority, namely: indicator one – children in detention; indicator three – children in pre-sentence detention; indicator nine – custodial sentencing; indicator ten – pre-sentence diversion; and indicator fourteen – specialised juvenile justice system.

Armed Conflict Cannot Be a Pretext for Marginalising Juvenile Justice.

Outside the context of armed conflict, some countries lawfully recruit children into government armed forces, others join military schools with a view to enlisting into the armed forces at a future date. As these children are subject to the military legal system, the Committee on the Rights of the Child has raised a number of questions about the nature of the criminal procedure, and applicable sanctions, in terms of safeguards and compliance with Articles 37 and 40 of the Convention. Questions must also be raised about the technical and ethical content of training given in these schools.

However, other children also find themselves directly and actively involved in conflict through their recruitment by armed state or non-state actors. In cases of 'child soldiers' tried for crimes committed during an armed conflict, a complex question is whether the fact of being under the age of criminal responsibility can, or should, be systematically used to exempt them from judicial proceedings. What is clear is that applying blanket impunity to transitional justice processes may risk, in the event of a resumption of hostilities, encouraging warlords to recruit children to commit atrocities, in the belief that these minors will evade prosecution. However, what needs to be clearly and rigorously acknowledged is that the warlords themselves, in engaging in under-age recruitment in the first place, have committed war crimes for which they should be held accountable.

Regarding the involvement of child soldiers in post-conflict proceedings forming part of a national reconciliation process, they must benefit from measures designed for the protection of child witnesses or victims, as provided for under international law, regardless of whether their recruitment was voluntary or forced.

Child victims and witnesses denotes children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders.[6]

It should be noted here that in Articles 37 and 40 of the Convention, concerning the deprivation of liberty and the administration of juvenile justice, it is at no point specified that a conflict or post-conflict situation authorises any derogation from the strict application of the principles of juvenile justice on the grounds of a legal exception. Furthermore, a study by the United Nations Sub-Commission on the Promotion and Protection of Human Rights concluded that military tribunals should not have, as a matter of principle, the jurisdiction to judge anyone under the age of 18.[7]

In post-conflict situations, the restoration of the rule of law should be used as an 'opportunity' to reform the juvenile justice system in compliance with international standards, and integrate it into the establishment of a broader human security policy. The chaotic nature of the post-conflict environment requires that re-establishing a functioning juvenile

justice system, including prevention, be set as a priority, at the risk of seeing countless minors turn into habitual offenders. At the same time, the prevention of maltreatment and sexual abuse in institutions or places of detention for the civilian population should be dealt with as an issue of the utmost seriousness.

When an international force intervenes during or after a conflict to oversee an end to hostilities, or for peacekeeping purposes, safeguards to judicial procedure must also be secured in accordance with international standards. Local personnel must be trained to this end, in particular, in countries where relevant national laws are incompatible with international standards or, worse still, are non-existent. Also, in the face of criminal behaviour by members of foreign military and humanitarian forces intervening in situations where the civilian population is especially vulnerable, in particular children, it should be noted that the legal immunity of these military or UN forces does not necessarily extend to covering crimes committed in relation to the civilian population: for example, in cases of child prostitution, or extortion of sexual favours for humanitarian assistance, as has been reported in Africa or Asia in recent years.

Finally, in the context of the 'war on terror', some governments have enacted exceptional laws and procedures that make no distinction between juveniles and adults 'suspected' of acts of terror. Incarcerated with adults from their apprehension, or in preventive detention, their fate is sometimes determined in total non-compliance with basic legal procedures and guarantees of due process such as the presumption of innocence, the right of defence or the right of appeal against the deprivation of liberty. This is not to mention the total absence of social or psychological support. The 'war on terror', having resulted in an extension of preventive and surveillance measures for the civilian population, also means that even during simple public demonstrations (distribution of tracts, etc.), juveniles are increasingly vulnerable to arbitrary arrest and detention, or to being handled 'in secret' along with adults.

The concept underpinning why under-18s need special protection when they come into conflict with the law does not become invalid merely because they are members of the armed forces or because additional or exceptional legal powers apply. The reasons why children and juveniles are recognised as needing and deserving different treatment remain applicable – so should the requisite standards.[8]

Conclusions.

The experience of one non-governmental organisation, active in the promotion of juvenile justice, reveals a strange paradox: it is the most underprivileged countries that have traditional methods of punishment for juvenile offenders, that are geared towards education and the re-integration of the minor into the community, and never to exclusion (this does not however mean that all forms of traditional punishment can be condoned). In the most developed countries, with their technology-based security approaches, and the available resources to pursue alternatives for children in conflict with the law, they often fail entirely to resolve the issue of the long term rehabilitation of the minor. While the concept of restorative justice may not be the panacea for resolving all of the problems of juvenile delinquency, the technological approach also has its limitations. Does having cameras on every street corner make us more secure (Switzerland)? Is there any pedagogical value in using a 'Taser' and other electrical stun guns in a teenage street brawl (France)? And, do metal detectors in schools prevent youth delinquency (United Kingdom)? Perhaps! But only as short-term deterrents that divert attention from the more pressing need for long-term preventive strategies that help young people avoid lives of crime and violence.

Who takes the necessary time to hear a child out; to establish or restore relationships built on trust; to teach them that a human right is first and foremost about their interaction with others – 'others' who share the same rights – and, as such, respecting one person's rights means respecting those of others? And so on, and so forth.

The individual future of adolescents is often unpredictable, but in every case of the successful rehabilitation of juvenile offenders, they state that one person or one group proved to be crucial for mending broken bridges – people who acted as role models or mentors, people who gave them a second chance.

Since the dawn of human existence, societies have gradually refined their educational practices to promote inclusion (each society being aware that the next generation is the key to its own survival): so in what way does a society's security justify exclusion?

Human security can only exist through the rule of law, as the law is the instrument that governs – and restores – relationships between individuals once they have been broken. Any regime that establishes a security-focussed society at the expense of human rights develops totalitarian tendencies and, as the last century demonstrated, totalitarian states have a tendency to become criminal.

Human security is, perhaps above all else, a system of representation that is both political (on the part of the authorities) and social (in terms of public opinion), hence the vital importance of the existence of a credible media enabling the viable and accurate sharing of information, an independent assessment of the criteria for establishing data collection, and a real debate on policies adopted to deal with the most serious breaches of human rights.

Any security policy that is built at the expense of the observance of human rights is doomed to failure.

Endnotes.

1 Translation from French by Intonation, Lyon. Interpretation: David Nosworthy.
2 Speech by the United Nations Secretary-General during a speech marking the end of his mandate, given on the occasion of the International Human Rights Day in Geneva, 10 December 2006, http://www.un.org/democracyfund/XNewsHumanRightsDay.htm (accessed October 2008).
3 UN, *Report of the World Summit for Social Development* (including the Copenhagen Declaration and Programme of Action), UN doc. A/CONF.166/9 (New York: April 1995), http://www.un.org/documents/ga/conf166/aconf166-9.htm (accessed Oct. 2008).
4 Extracts from 'State Violence against Children', theme for the day of general discussion during the 25th Session of the Committee on the Rights of the Child (22 September 2000), http://www.unhchr.ch/html/menu2/6/crc/doc/days/violence.pdf (accessed November 2008).
5 UN Office on Drugs and Crime and UNICEF, *Manual for the Measurement of Juvenile Justice Indicators* (New York: UN, 2006).
6 UN Economic and Social Council, Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* (New York: 2005), http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf (accessed October 2008).
7 United Nations ECOSOC, Commission on Human Rights, *Administration of Justice, Rule of law and democracy*, UN doc. E/CN.4/Sub.2/2003/NGO/23 (15 July 2003), http://www. quno.org/geneva/pdf/Juveniles-under-milit200307.pdf (accessed Oct. 2008).
8 Rachel Brett, 'Juvenile justice, counter-terrorism and children', UN Institute for Disarmament Research, *Disarmament Forum* (March 2002): 29-36, 38.

Article 16: Every child, whatever his parentage, has the right to the protection that his status as a minor requires from his family, society and the State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother. Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.

–Additional Protocol to the American Convention on Human Rights
in the Area of Economic, Social, and Cultural Rights.
Adopted 1988 at San Salvador

OPCAT Signing, Ratification, and Implementation

by Martha Miravete Cicero

Grupo de Mujeres de la Argentina

Foro de Vih Mujeres y Familia

Implementación del Protocolo Facultativo: Celebrado en Sao Paulo, Brasil del 22 al 24 de junio del 2005. El seminario lo organizan: la Asociación para la Prevención de la Tortura, el Centro para la Justicia y el Derecho Internacional y la Comisión Teotoño Vilela.

La comisión contra la tortura y otros tratos crueles, inhumanos o degradantes, diversidad de formas de los estados descentralizados, identificación de las áreas que hacen parte de una división federal, estrategias y posibles soluciones para la implementación del protocolo y descripción del proceso como ejemplos ilustrativos.

Protocolo Facultativo de la prevencion de tortura: Adoptado por la asamblea general de las Naciones Unidas en el 2002. Hace énfasis en la prevencion más que en la investigación. Cada uno de los países debe establecer el subcomité para la prevencion y mecanismos nacionales de prevencion.

Mecanismos nacionales e internacionales realizan visitas periódicas proponiendo recomendaciones para lograr una mejor prevencion de tortura. El mecanismo nacional debe cumplir los requisitos de efectividad e independencia. Los miembros del mecanismo internacional y nacional deben tener acceso a todos los lugares oficiales y no oficiales como: cárceles, estaciones de policía, centros para jóvenes, lugares de detención administrativa, instituciones médicas y psiquiatritas, etc. También, tienen el derecho de realizar entrevistas en privado sin necesidad de ningún testigo con cualquier persona privada de su libertad, acceso irrestricto a todos los archivos de cualquier detenido, acceso a todos los servicios de las instalaciones para que al final de la visita los mecanismos puedan un informe y una serie de recomendaciones.

Estados Descentralizados: La descentralización del estado puede tomar múltiples formas: una de ellas consiste en delegar a municipios o gobiernos locales cierta autoridad delimitada. También es común la división de autoridad federal para convertir un gobierno federal a un gobierno regional. Generalmente, divide la autoridad sobre unidades geográficas, cada provincia se le da autoridad sobre el "establecimiento, mantenimiento y administración de cárceles públicas y reformatorios en y por la provincia". En cualquier situación, cuando ocurra traslape, puede que la constitución proporcione explícitamente o no una fórmula para resolver los conflictos entre las unidades políticas central y descentralizadas. Los gobiernos federales también podrían buscar maneras de supeditar las limitaciones de su autoridad recurriendo a formas de apoyo político que no dependan directamente de la competencia legislativa en el área.

Implementación del Protocolo en Estados federales y descentralizados: En nuetro país, al se un Estado Federal… Derecho de acceder sin aviso previo a todos los lugares donde se encuentren personas privadas de su libertad, sin tener que avisar siquiera a las autoridades del lugar en cuestión; Establecer protecciones legales para todas las personas, incluidos los/as oficiales encargados/as de hacer cumplir la ley y las personas privadas de su libertad, que cooperan con el Subcomité Internacional y los mecanismos nacionales de prevención; Establecer un proceso para recibir, responder y actuar sobre las recomendaciones del Subcomité Internacional y el mecanismo nacional de prevención.

Existen proyectos en las Provincias de Santa Fe, Rio Negro, y en proyecto Cordoba, pero todavía no han tomado el mismo las demás provincias de nuestro país.

Protocolo Facultativo de la convención contra la tortura:

La APT lidero el proceso de casi 30 años que llevo a la adición del protocolo facultativo por la asamblea general de la ONU. Esto establecerá dos tipos de instancias para el monitoreo permanente: subcomité para la prevencion y mecanismos nacionales de prevencion. Protocolo consiste justamente en ese pilar nacional, a través del establecimiento, además del órgano internacional, de uno o varios órganos nacionales que realizarán visitas de monitoreo a todos los lugares de detención del país con el propósito de prevenir la tortura y los malos tratos, instaurando un diálogo regular con las autoridades, sometiendo informes y recomendaciones sobre la situación de las personas privadas de libertad.

Por que es tan necesario un Protocolo Facultativo a la Convención contra la Tortura de las Naciones Unidas?

A pesar de todos los esfuerzos para erradicar la tortura, estas abomínales practicas aun persisten y se extienden por todo el mundo. Esto explica el esfuerzo por enfocar de una manera completamente distinta y novedosa la tortura, y ello desde la perspectiva de la prevencion. Esta nueva perspectiva se basa que en cuanto más abiertos y transparentes sean los lugares de detención, menores serán los abusos. Las personas privadas de libertad se encuentran en una alarmante situación de vulnerabilidad y de indefensión ante los abusos, incluyendo tortura, los malos tratos y otras violaciones de los derechos humanos. Abrir los lugares de detención a un sistema de control externo, tal como lo establece el protocolo facultativo, constituye a prevenir practicas abusivas y mejorar las condiciones de detención.

Desde GMA, decimos que la tortura no solo puede ser física, también puede ser violencia de sistema, apremios ilegales, psicológicos, hasta coacción en juntas de informes criminológicos a personas en estado terminal. Tortura es también el realizar una abandono de persona, mala praxis, hasta una continuidad de tratamiento intrapostmuros….

Esto lo podemos ver en las distintas audiencias por ejemplo en Latinoamérica sobre la situación de cada país miembro de la OEA. Al analizar las presentación en las asambleas que se realizan cada año a CIDH, se puede ver la real falta de políticas de estado… con respecto a atención y programas que debe dar para mejorar las condiciones intrapostmuros. Mas que esto esta implementado en las premisas y compromisos internacionales que han firmado los Estado.

El ver por ejemplo en argentina mas violencia en la sociedad, mas delitos y hasta hechos realizados por mejores… es una respuesta clara a faltas de políticas de Estado…

En Argentina el bajar la imputabilidad de los menores es también una forma de tortura a la pobreza…

Creemos que la falta de dialogo con las ongs y el comprometerse en trabajar nacional e internacionalmente con organizaciones reconocidas en su trabajo, hace ver que todavía no se encuentran los Estados en un crecimiento real a mejorar sus programas…

No creemos que el sumar ongs amigas a estos programas se logren mejoras, porque estas solo mostrar los programas del momento, pero sin cambiar la realidad que ya viene sucediendo en cada país, hasta las mismas pueden retroceder lo actuado, trabajado y luchado nacional e internacionalmente..

Bien lo vemos en las ultimas reuniones de la ONU, en VIH que los gobiernos hacen una mea culpa que no llegan a lo propuesto para el 2015, además en las reuniones de la OEA, también vemos una falta de dialogo con las ongs consultoras…

Pero hemos logrado desde el compromiso de la ONGs el que desde la ONU, se logre programas, proyectos específicamente de salud AIDS, en cada país, GMA ha participado en el comité de seguimiento y monitoreo de estos proyectos, para lograr cambios en la situación de salud en encierro.

Tambien GMA participa en los foros virtuales de la OEA, pobreza, criminalidad, terrorismo, salud y vemos que todavía falta un compromiso de las partes al dialogo adulto.

Gma, así como en AID lucha por la implementación del MIPA, que personas que viven con VIH puedan participar en reuniones de discusión y poder lograr que el estado se comprometa en la integracion social de las personas que viven prisions. Buscamos que se pueda lograr desde la realidad de los/as que vivimos el encierro, podamos participar de estas discusiones internacionales, como también que las ONGs que trabajan en la temática sumen voluntarios/as, y capacitar activistas para que sean las voz del encierro.

Porque en Argentina todavía nos deben dar respuesta a:

TERESYTA .

TORTURA – Piñeiro David – arresto domiciliaro ahora, pedio un ojo, cuerpo quebrado, 16 apuñaladas en el torax.

MADRES – Natalia Benecio – falleció su bebe de 6 meses el estado dio respuesta a la presentación de la CIDH que murió de muerte natural por bronquioneumonia, la fiscar archivo la causa, pero el informe dado por la misma fiscal al entrar a la unidad encontró que no había ambulancia, que la caja de primeros auxilios era una caja de herramientas, y la sala de salud no estaba abilitada ni la aterior y el nuevo espacio. Cuando hemos recibido la negación de la CIDH de seguir este caso 2 meses atrás, nos han informado que otro bebe murió en el parto en esa misma unidad.

LOURDES – por ser madre lesbiana y buch, una jueza le saco su niño no dándole derecho a que su abuela pueda criarlo.

Leo – mama lesbiana, al ser detenida no pudo tener su bebe de 7 meses con el dejándola 6 dias sin darle el pecho. Cuando GMA intervino en el caso, hemos logrado que la beba este con ella, pero cuando ingreso la menor no realizamos ningún tramite al ingresar. Hoy se encuentra esperando juicio en libertad, habiendo estado en arresto domiciliario en la sede de GMA.

Candia – joven que fue apuñalado en la cabeza, lleva 6 años de procesado sin sentencia y sin juicio, hemos pedido que se le de la libertad y fue denegada diciendo que GMA no es parte, igualmente seguimos luchando por su libertad.

SEBASTIAN ORTEGA, hoy se encuentra con condena porque al reclamar su situación de salud de VIH y contranatura, a los 2 dias tuvo juicio oral, teniendo una indefencion jurídica, dos veces hemos solicitado su derecho de arresto domiciliario, pero la justicia no da respuesta hasta la fecha, este caso ha sido dado como ejemplo sobre la realidad del SPF ya que el gobierno en la audiencia 133 de la CIDH informo que no había casos y era un ejemplo de b uenas practicas penitenciarias.

Pedro Mielnik Montenegro – lleva 29 años detenido, igual que Solari Torres Ramon, dos personas que han vivido la tortura y la degradación en encierro, hoy son estudiantes sin poder lograr su derecho de libertad y de progresividad de la condena. Varias veces en su tiempo de detención le han limitado la posibilidad de estudiar, y hoy existe en el juzgado contencioso administrativo, una denuncia de la UBA con respecto a los derechos de estudio.

Casos de provincia de bs as – en el departamento de Quilmes no se cumple el pacto de san jose de costarrica hay juciios para el 2015.

Esto quiere decir que en lo que hoy GMA ha exponer, vemos que muchos países, no han ratificado el OPCAT, es mas muchos de los estados no han cumplidos con los tiempos solicitados, o también en la redacción de los programas de país, vemos en varios países de latinoamerica que las ONGs no participan de los mismos, y solo se ha logrado que la defensoria general participe, pero creemos que esto no debe ser asi, puesto que si somos consientes de lo que pasa, la defensoría también es parte del estado y faltaría la vos de la población, de las familias y de los mismos damnificados por el sistema, que seria las personas privadas de libertad…

Es por eso que creemos que este espacio, este congreso, esta unión de ideas y programas los cuales traemos en estos panelas las ONGs, seria positivo poder relevar conclusiones en un Comunicado en conjunto, desde CURE INTERNACIONAL ya que estamos en un espacio de dialogo de las partes involucradas del mundo.

The Convention on the Rights of the Child in regard to People in Prison and their Children

Anita Colon, PA CURE USA

My name is Anita Colon. I am the Pennsylvania State Coordinator for the National Campaign for the Fair Sentencing of Youth. This national organization was funded by the Human Rights Watch with the explicit goal of working to eliminate juvenile life without parole (JLWOP). I am also a member of PA-CURE, I serve on the steering committee for Fight for Lifers –East, and I am a member of the Pennsylvania Prison Society's JLWOP subcommittee.

The primary goal/focus of *The Convention of the Rights of the Child* (CRC) is to ensure that all children are provided the opportunity to grow up in a family environment and brought up in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity. When we relate this treaty to the Criminal Justice System, obviously both the incarceration of children and the separation of children from their parents due to one or more parents' incarceration infringes upon these ideals. It is also important to note that for the purposes of the CRC, a child is defined as any human being under the age of 18.

The CRC was adopted by the United Nations for signature and ratification in 1989 and entered into force in September of 1990. Since then, a total of 193 countries have ratified the treaty, and only two countries have refused to – the United States and Somalia. Somalia has not ratified the treaty because it does not have an internationally recognized functioning government but the United States certainly does not have that excuse. Ratification of the CRC in the US would fill current gaps in our laws and provide vulnerable children in America with the same protections that children in the 193 other countries that have ratified these treaty, are entitled to.

My discussion will focus on the one crucial effect that ratification of the CRC would have for the US – the elimination of juvenile life without any possibility of parole, or more appropriately, eliminating the sentencing of children to die in prison. *Article 37* of the CRC reads:

> States Parties shall ensure that:
>
> (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
>
> (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
>
> (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
>
> (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

The United States is currently the only country in the world known to have children sentenced to and serving life without the possibility of parole. This alone glares that there is something wrong with this policy. Currently there are

over 2,500 prisoners convicted of juvenile life sentences in the United States. Eight other countries do not officially declare it against the law, but there are no known cases of the sentence being imposed. Detailed research on the use of this sentence around the country has documented evidence of systemic racial disparities, gross failures in legal representation, and many examples of youth being sentenced more harshly than adults convicted of the same crimes.

In 2006, the U.N. Human Rights Committee declared that the United States was in violation of its treaty obligations by continuing to try children as adults and imposing JLWOP sentences. The U.S. did not respond.

In March 2008, the U.N.'s Committee on the Elimination of Racial Discrimination condemned the United States policies on juvenile offenders and recommended it "discontinue the use of life sentences without parole against persons under the age of 18 at the time the offense was committed." This panel also recommended that the U.S. review the situation of persons already serving such sentences.

The International Human Rights Watch issued a recommendation that all countries around the world take the following minimum steps to safeguard the human rights of children in conflict with the law. These recommendations are:

1) All governments should ensure that children in conflict with the law are detained only as a last resort and for the shortest appropriate period of time.

2) Conditions of detention and incarceration should meet international standards. Children should never be detained with adults.

3) Countries that retain the use of the death penalty or life without parole should end these practices immediately and amend their legislation accordingly.

Approximately 59 percent of the prisoners serving life without parole for crimes they committed as juveniles were first time offenders, never having been convicted of a previous crime. And almost 30 percent were convicted of JLWOP because they participated in a crime that led to a murder but did not themselves kill anyone. In most of the cases here in Pennsylvania, these sentences were a result of mandatory sentencing currently in place for adults convicted of murder.

In addition, there is a disproportionate number of minorities serving juvenile life without parole throughout the United States. African American youth represent only 19% of the U.S. population, yet they represent over 65% of youth serving JLWOP sentences. African American youth are also over ten times more likely than white youth to be given a sentence of life without parole and Latino youth are over 5 times more likely to receive this sentence.

My home state of Pennsylvania has the distinction of having the highest number of juvenile lifers in the country, with over 450 (almost 20% of the population of juvenile lifers in the world). This is primarily due to the automatic transference of juveniles to adult court and mandatory sentencing state laws currently in place. Also, there is no minimum age that a child can be charged as an adult and sentenced to life without the possibility of parole in Pennsylvania. The youngest inmates serving life without parole were convicted of crimes committed at only twelve years of age, but currently an eleven year old boy awaits trial, and if convicted, will be sentenced to die in prison as well.

The U.S. Supreme Court made the distinction between the culpability of juvenile offenders and adult offenders when it abolished the death penalty for juvenile offenders in 2005. Citing both clinical and academic research, they acknowledged that adolescents are immature, incapable of clear adult decision making, and prone to peer pressure. At the time this ruling was made, there were 72 juvenile lifers on death row.

Our laws do not allow juveniles to assume the same responsibilities as adults (such as driving, voting, drinking, or joining the military) because we know that they are not mature or mentally developed enough to make these decisions about or control these actions. Yet, we hold these same children as accountable as adults when it comes to crime. Juvenile offenders should not be held to the same level of accountability as adults because they are children. Using

this same logic, it is time that the United States abolishes life without parole sentences for juvenile offenders as well as ratifying the CRC.

Finally, JLWOP, like most forms of unusually harsh punishment, does not serve as a deterrent. Research studies have shown that juvenile offenders are more susceptible to rehabilitation and treatment than adult offenders.

On a positive note, the momentum surrounding the juvenile life without parole issue is building tremendously, both on a local and national level. Last month U.S. Congressman Robert Scott (VA) reintroduced a Federal Bill that would eliminate JLWOP on a Federal level and require states to follow suit or face significant reductions in federal funding. I testified along with many other expert witnesses at the House Sub-Committee hearing on the bill in Washington, DC just two weeks ago. Several states also have bills pending that if passed, would eliminate JLWOP.

In addition, the Supreme Court has agreed to hear two cases involving juvenile lifers (both in Florida, one 13 and one 17) who were convicted of life without parole (LWOP) for cases that did not involve a homicide. Although the outcome of these cases will likely not affect the majority of the juvenile lifers in our country, there have been countless articles published throughout the country recently highlighting the general issues of JLWOP in the U.S. and questioning whether the sentence is appropriate.

In closing, these children are not beyond redemption, but currently they are without hope. We imprison children for the rest of their lives, without any hope of rehabilitation or re-entry into society and call it justice. Well, I call it inhumane. I urge the United Nations Committee on the Convention of the Rights of the Child (CRC), the United Nations Committee Against Torture, as well as all of your respective governments to pressure the United States to ratify this important treaty.

Article 37: States parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment or life imprisonment without possibility of release shall be imposed for offences commited by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered to be in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

–International Instruments: Convention on the Rights of the Child
Opened for Ratification 1989
Entry into Force 1990

Freedom, Equality, Justice and Dignity

The key words of the African Charter and the African Commission on Human Rights,

now the title and heart of the e-book on the International CURE website.

Presented in Geneva from New York via SKYPE

As you know, International CURE focuses on the reduction of crime, and the restoration to wholeness, and fullness of life for all, particularly including those who have broken society's laws. We all know that this may involve the transformation of both incarcerated persons and the systems that govern them. That's not easy. What's our plan?

In this, we want to draw upon the wisdom and experience of individuals and organizations, worldwide, and to welcome full sharing and collaboration.

We seek a foundation and direction for this work in the collective wisdom reflected in the statements of human rights and standards that are documented by the United Nations, the African Charter, seven African International Conferences, and the Organization of American States.

First, however, we need to ask: (1) Where are we? (2) What should be done? And (3) What works? To build our knowledge base for future action, we're evolving what we've called the PAJART process (Prisons and Justice: Assessments, Recommendations, and Transformations), as reported in the e-book on the CURE website at www.internationalcure.org/pajart.htm .

That process is in five stages:

First, we developed a comprehensive Survey, with 21 topics, guided by both CURE's collective experience and the above international statements of human rights and standards. The Survey is intended to illuminate both problems and progress in prisons and justice systems in many countries.

The survey also had to compassionately represent those incarcerated.

Problems are inter-related. In the e-book: You might go to the Survey, and pick topics that are important to you (e.g. prison conditions-crowding, sanitation, disease). Overcrowding is obviously a key physical space issue. But, which other topics are related or could directly help solve problems - e.g. alternatives to incarceration? Or, legal assistance to persons living in poverty? These offer partial solutions to overcrowding.

All CURE chapters in Africa were asked to do Assessments of their countries using that comprehensive Survey. What is really going on in each country – good and bad? We now have twelve country assessments in the e-book – enough to help us begin to define our tasks and priorities. (Other country assessments will be added on-line as they are received.)

In the e-book: You could go to Country Assessments; pick a few countries that concern you; scroll down to your chosen topics. What are the key problems? Are these problems common in many countries?

e.g. Zambia: The country's prisons, which were built to hold 5,500 inmates, held nearly 15,000 prisoners and detainees. Lusaka Central Prison, which was designed to accommodate 200 prisoners, held more than 1,500, forcing some inmates to sleep sitting upright.

We ask: How do these Country Assessments compare with relevant Human Rights documents? Do we have a human rights violation?

For example, in the e-book: **Go to D.R. Congo, Health care**:

In many prisons, the government had not provided food for many years—prisoners' friends and families provided the only available food and necessities. Malnutrition was widespread. Some prisoners starved to death. During the year many prisoners died due to neglect. For example, the UNJHRO reported that over a two-month period, 21 prisoners died from malnutrition or dysentery.

And in Niger:

The conditions of detention are very, very bad. Toilets and showers are very deplorable. Obviously, overcrowding makes for very sick prisoners.

And in Guinea, regarding abuse:

Prisoners, including children, bore similar wounds and shared common stories. According to NGOs, prisoners claimed that guards routinely threatened, beat, and otherwise harassed them.

According to a local prisoner advocacy NGO, 52 percent of the prisoners at the Conakry Central Prison displayed evidence of torture, including scars from cigarette and plastic burns, head injuries, burned hands, and skin lacerations. Prisoners were reportedly routinely tortured to extract confessions or to extort money.

We ask: Where are the most serious failures in human rights? For sure, malnutrition, prevalence of disease in crowded cells, and very poor health care are extremely serious problems. Physical and mental abuse, found in many prisons, are signs of social disintegration. Little or no legal aid is no justice.

Recommendations: So then we ask: What should be done? What are collective recommendations? For each topic of the Survey, we start by examining the recommendations of the seven African International Conferences. In view of the Country-Assessments and Human Rights, what further recommendations are most needed?

For example, what recommendations do we find for reducing overcrowding? In the e-book: Go to Recommendations for Structures and Alternatives that offer more justice:

There is the *Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa*[2] which lists strategies for preventing people from coming into the prison system:

- Use of alternatives to penal prosecution such as diversion in cases of minor offences with particular attention to young offenders and people with mental health or addiction problems.

- Recognition of restorative justice approaches to restore harmony within the community as opposed to punishment by the formal justice system – including wider use of family group conferencing, victim offender mediation and sentencing circles.

We find many other ways to avoid needles incarceration, in the Recommendations for Legal Assistance in the *Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa*.

- Diversify legal aid service providers, and enter into agreements with the university law clinics, nongovernmental organizations (NGOs), community- based organizations (CBOs) and faith-based groups to provide legal aid services.

- Agree on minimum quality standards for legal aid services and clarify the role of paralegals and other service providers by: – developing standardized training programs – monitoring and evaluating the work of paralegals and other service providers.

Then there are Recommendations regarding Health Care, Equality, and Human Dignity in the *Kampala Declaration on Prison Health in Africa:*[2]

Equality of access to health care should be ensured. The Ministry of Health should take over the responsibility of health in prison and prisons should be included in public health programs. Adequate finance should be made available and budgeting for prison health care should be a separate line item.

• Discipline regarding maintenance of hygiene and sanitation in institutional environments must be enforced.

There are recommendations regarding protection against abuse of incarcerated persons by Gerard de Jorge in his paper on "The Ethiopian Penitentiary System."

> "Three fundamental safeguards against ill-treatment of detained persons (whether in police custody or in prisons) are: the right of the person concerned to have the fact of his detention *notified to a third party* of his choice, the right to access to a *lawyer*, and the right to request a *medical examination* by a doctor."
>
> "Police jails and prisons are by their nature closed institutions. It is evident that in institutions that are not accessible for the general public abuse of power and violation of fundamental rights and freedoms is a real risk. This can only be prevented by installing a system of inspection *by an independent authority."*

From all this, we've tentatively selected eight KEY PROBLEMS and OPPORTUNITIES, which were highlighted in the country assessments. All of these demand urgent attention. They are cited in the e-book with tentative priorities 1-5 , along with the evolving Recommendations to address them. They are:

1. Overcrowding.
2. Alternatives to incarceration.
3. Health Care.
4. Legal assistance.
5. Abuse of incarcerated persons.
6. Rehabilitation Programs.
7. Reentry Programs.
8. Pretrial services and process.

And, finally, we start a search for those proven Transformative Programs (What works, in world-wide experience?) that can help to transform incarcerated persons and the systems that govern them.

To illustrate, in the e-book: Go to Transform Programs and then to Community Aid:

You will find "THE UGANDA DISCHARGED PRISONERS' AID SOCIETY (U.D.P.A.S.)"

The Uganda Discharged Prisoners' Aid Society is a voluntary charitable organization run under the auspice of the Prisons Department. The society is open to people from all walks of life.

U.D.P.A.S. fills the gap which government cannot fill, for example, transport from the place where the ex-prisoner was arrested to his home village, the offer of some items, such as hoes and pangas, or carpentry tools, for those who are going to do carpentry; or seeds, clothing, blankets, etc. There are also counseling services offered by UDPAS.

Also in the e-book: Go to Transform Programs and then to Mentoring:

LifeLine, in Canada, is about long-term incarcerated persons who have successfully re-integrated into the community for at least five years and who are recruited to help other long-termers throughout their sentences. Its mission is "to motivate incarcerated persons and to marshal resources to achieve successful, supervised, gradual integration into the community."

In addition, there's all-important human-capital formation by Education/Treatment/Training programs:

Freedom is not only less physical prison; it also involves freedom from prisons of poverty and marginalization. Education and job training are the keys to halting economic deprivation, servitude, and oppression, - e.g., a prisoner in Argentina is learning to operate a printing press. Extensive treatment of alcoholic and drug problems are often pre-requisites to personal transformation. And training in human relations and non-violence build capability in communication, cooperation, and conflict resolution, - e.g., a group of prisoners, with the help of an outside volunteer, can help one another.

Tell us, in your experience, which programs are most productive? Which programs can help to fulfill key Recommendations? What really works? We all need your input.

The e-book's Recommendations and Transforming-Programs are still Evolving. We want to give all CURE chapters a further opportunity to build the on-line libraries of the all-important Recommendations (what should be done?) and Transforming-Programs (what works?). We want that to reflect your best knowledge and experience. One way is by web-based dialog.

For example, we've made possible the airing of your suggestions, and your comments on others' suggestions, via Google Group facilities (GG) – one group for Recommendations and another group for Transforming-Programs. There, you can link to what's already in the e-book, enter you own input, and comment on other's inputs.

These two Google Groups are now ready for your comments and input. We will email some instructions on their use in a few days. Our current plan is to reserve their use for CURE chapters for the month of July, and to then invite the larger CURE community to also participate.

Results of the two Groups will be fed into the e-book. Try it! You might like it!

Thus, we have:

- A base built on international human rights and standards.
- Assessments of current conditions in many countries.
- Identification of key problems.
- An evolving library of recommendations for change.
- A growing library of proven solutions.

This PAJART process, *seeking freedom, equality, justice and dignity*, benefits from all of your insights; it helps to see our way more clearly, and will lead to meaningful action.

Rule # 80 (Social Relations and Aftercare): From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

–Human Rights in the Administration of Justice
Protection of Persons Subjected to Detention or Imprisonment
Standard Minimum Rules for the Treatment of Prisoners
Approved in July 1957 and May 1977

“Otros Tratos o Penas Crueles, Inhumanos y Degradantes en el Sistema Carcelario”

Julio C. Guastavino Aguiar, Public Criminal Defender
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República Oriental del Uruguay
South America

“No puede juzgarse a una nación por la manera en que atiende a sus más destacados ciudadanos, sino por cómo trata a los más marginados: a sus presos” ... Nelson Mandela

BREVE INTRODUCCIÓN.-

El presente trabajo, para la IV Conferencia Mundial sobre Derechos Humanos y Reforma de la Prisión, pretende dar una visión fotográfica muy rápida de la situación del Sistema Carcelario del Uruguay hoy, enfocado básicamente al concepto de “Otros tratos o penas crueles, inhumanos o degradantes”, en adelante: TPCID- y unos breves y modestos “*apuntes para la reflexión”*, en la necesaria, imprescindible y urgente reforma de la Prisión en el Mundo.

Intentaremos brindar un pequeño informe de la situación de las cárceles en mi país, tomando las situaciones referidas al tema propuesto de los “*otros* tratos o penas crueles, inhumanos o degradantes” *distintos* de la Tortura.

Nuestra comunicación no analiza -por especificidad del punto propuesto hoy-, los más recientes casos de Tortura, Homicidios, Desaparición de Personas, Robo de Niños, y otros delitos, acaecidos durante el período de la dictadura militar en los años 1973 a 1984, que están siendo investigados y juzgados actualmente, al amparo de la normativa internacional y nacional de nuestro Ordenamiento Jurídico vigentes.

Obviamente que el punto de partida será la Convención contra la Tortura, pero claro está, que como toda norma jurídica, debe ser analizada e interpretada junto a otras que regulan la materia, y fundamentalmente, a las Convenciones y Tratados internacionales, con especial referencia a las disposiciones de los Derechos Humanos, y privados de libertad, con un sentido de interpretación integral.

Nos parecen fundamentales, los conceptos, consejos y reglas contenidas en el “Manual de Buena Práctica Penitenciaria” elaborado en 1994 por varios expertos internacionales, con el auspicio del Instituto Interamericano de Derechos Humanos y Reforma Penal Internacional, herramienta de gran valor para la implementación práctica de las “Reglas Mínimas de las Naciones Unidas para el Tratamiento de los Reclusos” así como otros estándares indispensables para la buena práctica penitenciaria, incluyendo los “Principios Básicos de Naciones Unidas para el Tratamiento de los Reclusos”, de los que extraemos varios conceptos y reglas de mucha utilidad en el tema del panel seleccionado.

No pretende nuestra comunicación ser un trabajo dogmático y doctrinario exhaustivo, ni por supuesto reiterar toda la normativa internacional vigentes al momento, a través de los distintas Convenciones e Instrumentos Internacionales, Regionales y Nacionales en la materia; muy por el contrario creo que debemos tomar una vez más conciencia, de que las mismas reflejan y son un marco garantista muy adecuado para la promoción y protección de los Derechos Humanos de los Privados de Libertad, y en definitiva para la seguridad y paz de toda la Sociedad.

Sin embargo, cuando observamos la efectivización de esa profusa normativa, la realidad nos muestra un panorama muy diferente que en muy poco cumple con los mandatos legales: y de aquí nuestro compromiso histórico que debemos tener, de cambio de actitud, y de acciones concretas.

Estamos seguros que ésta 4ª Conferencia Internacional de CURE sobre Derechos Humanos y Reforma de la Prisión, nos hará unir más en nuestros compromisos.

INSTRUMENTOS JURÍDICOS INTERNACIONALES RELACIONADOS.-

- Declaración Universal de Derechos Humanos (Arts:5 y 7)
- Pacto Internacional de Derechos Civiles y Políticos (Art: 10)
- Convención Contra la Tortura y otros TPCID
- Protocolo Facultativo a la Convención contra la Tortura y otros TPCID
- Carta Africana de Derechos Humanos y de los Pueblos (Art: 5)
- Convención Americana sobre Derechos Humanos (Art:5)
- Convenio Europeo de Derechos Humanos (Art:3)
- Reglas Mínimas de Naciones Unidas para el Tratamiento de los Reclusos
- Pacto Internacional de Derechos Civiles y Políticos
- Principios de Ética Médica aplicables a la función del Personal de Salud, especialmente los Médicos, en la protección de Personas Presas y Detenidas contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes

CONVENCIÓN CONTRA LA TORTURA Y OTROS TRATOS O PENAS CRUELES, INHUMANOS O DEGRADANTES: ARTÍCULO 16:

Todo Estado Parte se comprometerá a prohibir en cualquier territorio bajo su jurisdicción ***otros actos*** que constituyan ***tratos o penas crueles, inhumanos o degradantes*** y *que no lleguen a ser* ***tortura*** *tal como se define en el artículo 1º,* cuando esos actos sean cometidos por un funcionario público u otra persona que actúe en el ejercicio de funciones oficiales, o por instigación o con el consentimiento o la aquiescencia de tal funcionario o persona".

Y continúa expresando el Art. 16: Se aplicarán, en particular, las *obligaciones* enunciadas en los artículos 10, 11, 12 y 13, *sustituyendo las referencias a la tortura* por referencias a *otras formas de tratos o penas, crueles, inhumanos o degradantes.(TPCID)*

Por tanto los Estados también deberán, entre otros:

- Educar a todo el personal penitenciario y técnicos sobre la prohibición de otros TPCID y prevención *(Art. 10)*
- Mantener sistemáticamente en examen los métodos y prácticas de interrogatorio…. *(Art.11)*
- Si hay motivos razonables, para creer que se ha cometido algún tipo de TPCID= *INVESTIGACIÓN.(Art.12)*
- Obligación de respetar el Derecho a Denunciar cualquier tipo de TPCID, examen médico, protección de testigos y las víctimas.*(Art. 13)*

¿ CUÁNDO EL TRATO, CONSITITUYE UN TRATO CRUEL, INHUMANO O DEGRADANTE QUE SE DIFERENCIE DE LA TORTURA?

Si bien la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes, define en su Artículo 1º a la Tortura, no hace lo propio respecto al concepto "Otros tratos o penas crueles, inhumanos o degradantes", dejando entonces la elaboración del concepto a la jurisprudencia nacional e internacional ésta tarea.

El Comité de Derechos Humanos, ha entendido en varios casos, por "***otros tratos o penas crueles, inhumanos o degradantes"*** a las prácticas que buscan despertar en la víctima sentimientos de ***miedo, angustia e inferioridad además de humillación y degradación*****;** ya sea que se utilicen como medio intimidatorio, como castigo personal, para intimidar o coaccionar, como pena o por cualquier razón basada en cualquier tipo de discriminación u otro fin.

La Corte Europea de Derechos Humanos, por su parte, aporta otra noción muy útil al concepto, estableciendo que la distinción entre "tortura" y "tratos inhumanos o degradantes", deriva principalmente de una diferencia de la ***"intensidad del sufrimiento causado".***

Las conductas que puedan tipificar éstas acciones, no necesariamente causarán sufrimientos físicos o mentales graves -*como los que resultan de la propia tortura*- pero incluyen tanto agresiones físicas o sicológicas como el hecho de obligar a una persona a cometer actos que transgreden importantes normas sociales o morales.

ALGUNOS SÍNTOMAS DE TRATOS o PENAS CRUELES, INHUMANOS o DEGRADANTES.-

Los síntomas y síndromes en los casos de tortura -en el concepto del Artículo 1º de la Convención-, no son nada fácil de agrupar para la ciencia médica y siquiatría forense; "*las torturas serán únicas y específicas para cada individuo, según sea el significado que cada uno de ellos le otorgue a la agresión, según sea la forma que cada uno resistió o no a la violencia, según sea la relación que cada uno estableció con el torturador, según los efectos desestructuradores que cada familia vivió…"*, de modo que para tratar y rehabilitar a éstas personas, no bastará con identificar los síntomas y configurar los síndromes". (Dra. Paz Rojas)

Por el contrario, en los "otros tratos" crueles, inhumanos o degradantes, la teoría puede extraer de la práctica, algunos síntomas muy comunes en estos casos, entre otros:

- **Sufrimiento mental**
- **Sufrimiento físico**
- **Angustia**
- **Humillación**
- **Miedo**
- **Degradación**
- **Inferioridad**

Pero los mismos, no llegan a constituir tortura.

ALGUNOS PRINCIPIOS DE LA PRÁCTICA QUE VISUALIZAN CUÁNDO ESTAMOS ANTE CASOS DE TPCID.-

De la práctica nacional e internacional en los distintos sistemas carcelarios, se han podido agrupar algunos principios que son útiles a los efectos de poder determinar si estamos ante casos de tratos o penas crueles, inhumanas o degradantes; entre otros se establecen los siguientes:

- **DESPROPORCIONALIDAD** del castigo con el acto cometido o al objetivo de asegurar disciplina y vida comunitaria ordenada;

• **NO RAZONABILIDAD**

• **NO NECESARIEDAD**

• **ARBITRARIO**

• **DOLOR o SUFRIMIENTO INDEBIDOS**

Las normas de Derechos Humanos que regulan los castigos dentro de las Cárceles, enfatizan siempre en el principio de proporcionalidad, que debe guardar precisamente, la debida proporción, la debida razonabilidad, con la infracción cometida. En éste sentido, el Artículo 3 del Código de Conducta de las Naciones Unidas para funcionarios Encargados de Hacer cumplir la Ley, prohíbe el uso de la fuerza por dichos oficiales, excepto, "cuando sea estrictamente necesario, en la medida que lo requiera el desempeño de sus tareas." Además el Principio 16, de los Principios Básicos sobre el empleo de la fuerza y de armas de fuego, por los funcionarios encargados de hacer cumplir la Ley, expresa, que solo se deberá hacer uso de la fuerza y armas de fuego, cuando haya un peligro inminente de muerte o lesiones graves, o de defensa propia o de terceros, o peligro de fuga del custodiado.

ALGUNOS FACTORES A CONSIDERAR PARA DETERMINAR SI EL CASTIGO VIOLA ESTOS PRINCIPIOS.-

Con el objeto de determinar si el castigo viola cualquiera de éstos principios, es necesario considerar los siguientes factores, a saber:

• **La naturaleza y duración del castigo**

• **Frecuencia de repetición del castigo y consecuencias acumuladas (tener en cta. edad, características físicas del preso/a)**

• **El estado de salud físico y mental del preso**

• **Oportunidad de verificación médica calificada de las consecuencias del castigo:** la Regla Mínima 32(1) y el Principio 3 de los Principios de Ética Médica: los médicos deben evaluar, proteger o mejorar la salud física y mental de los presos; nunca deben certificar si pueden recibir más castigos.

• **Respeto de las Leyes pertinentes**

ALGUNOS CASOS MÁS FRECUENTES DE TPCID EN EL SISTEMA CARCELARIO.-

• **HACINAMIENTO**

• **CONFINAMIENTO SOLITARIO:**

• **AISLAMIENTO PROLONGADO**

• **AISLAMIENTO INDETERMINADO**

• **AISLAMIENTO REPETIDO**

• **AISLAMIENTO JUNTO A OTRO CASTIGO**

• **ESPOSAS, GRILLOS e INSTRUMENTOS DE RESTRICCIÓN**

Confinamiento Solitario.-

De todas las formas de castigo, el confinamiento solitario es el más conocido que cualquier otro. La Regla 32(1) de las RM prohíbe las “penas de aislamiento y de reducción de alimentos”

Aunque las RM no prohíben expresamente el aislamiento solitario, lo hacen claramente una forma de castigo que no se debe usar frecuentemente y sólo en forma excepcional.

El Comité de Derechos Humanos de ONU, señaló que el confinamiento solitario prolongado puede violar la prohibición contra la Tortura. El Principio 7 de los Principios Básicos de las ONU para el tratamiento de los Reclusos, requiere que:

“Los esfuerzos dirigidos a la abolición del confinamiento solitario como castigo o a la restricción de su uso, deben ser emprendidos y fortalecidos.”

El confinamiento solitario, incluye entonces el *aislamiento prolongado, el indeterminado, el repetido y el que se hace junto a otro castigo.*

La Corte Suprema de Zimbabwe dictaminó que estos castigos eran inhumanos y degradantes, y por lo tanto inconstitucionales, diciendo que “Estas formas de castigo son evocativos de la Edad Media.”

ALGUNOS CASOS INTERNACIONALES de TRATOS o PENAS CRUELES, INHUMANOS o DEGRADANTES.-

• **Gatesville, Texas USA**: mujeres en el corredor de la muerte, en celdas muy pequeñas.

• **Caso Larrosa: URUGUAY 1981=** Comité De DDHH de ONU observó el *confinamiento solitario* prolongado que viola los D. del recluso a ser tratado con dignidad.

• Ramírez Sánchez: venezolano en **FRANCIA** que estuvo *8 años en celda de aislamiento*, Tribunal Europeo.

• Van der Ven: **HOLANDA**= lo obligaban sistemáticamente en las requisas a desnudarse, Tribunal Europeo.

• Frerot: **FRANCIA**= sometido a requisa total de su cuerpo e inspección sistemática de su ano.

• **LETONIA**: Comité Europeo constata *aros metálicos en celdas para atar de pies y manos*. El Gobierno detuvo ésta práctica y quitó los aros.

EL URUGUAY Y EL SISTEMA DE PROTECCIÓN JURÍDICA DE LOS DERECHOS HUMANOS.-

• **URUGUAY** se caracteriza históricamente, por haber aprobado rápidamente, la mayoría de todos los Tratados, Convenciones e Instrumentos Internacionales en materia de defensa y promoción de los DDHH, tanto en el ámbito Internacional como Regional, como consecuencia de la profunda inspiración democrática y humanista de nuestra Constitución Nacional.

• Aprueba el *27 de Diciembre de 1985* por Ley 15.798, la Convención contra la Tortura y otros TPCID (aprobada por ONU el *10-12-1984*)

• Aprueba *21 de Octubre 2005* por Ley 17.914, el Protocolo Facultativo de la Convención contra la Tortura y otros TPCID (aprobado por ONU el *9 de Enero de 2003)*

• Uruguay auspicia, promueve y facilita todo tipo de control nacional e internacional sobre el sistema carcelario. Aprobó la creación del Comisionado Parlamentario para el Sistema Carcelario con total autonomía orgánica e institucional en el 2005.

EL SISTEMA PENITENCIARIO EN EL URUGUAY.-

Art. 26 de la Constitución de la República Oriental del Uruguay:

"A nadie se le aplicará la pena de muerte. En ningún caso se permitirá que las cárceles sirvan para mortificar, y sí sólo para asegurar a los procesados y penados, persiguiendo su reeducación, la aptitud para el trabajo y la profilaxis del delito."

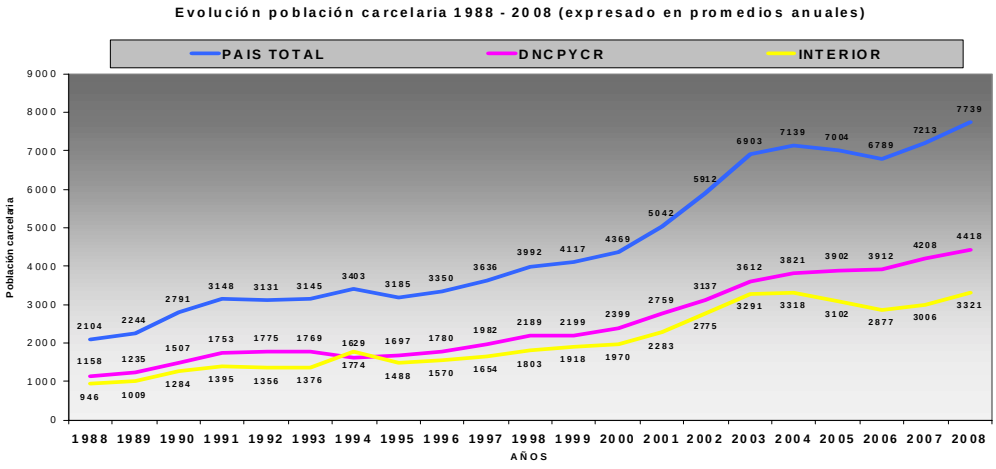
• Hasta el año 1971 el sistema penitenciario uruguayo dependía del Ministerio de Educación y Cultura, habiendo sido trasladada la competencia a partir de esa fecha al Ministerio del Interior.

• Actualmente todos los establecimientos de reclusión (27) dependen del Ministerio del Interior. Sin embargo el sistema penitenciario uruguayo no se encuentra aún unificado y los establecimientos carcelarios dependen de diversas unidades ejecutoras del Ministerio del Interior. Se hace necesario un cambio que se está gestionando para unificar a nivel nacional toda la política penitenciaria

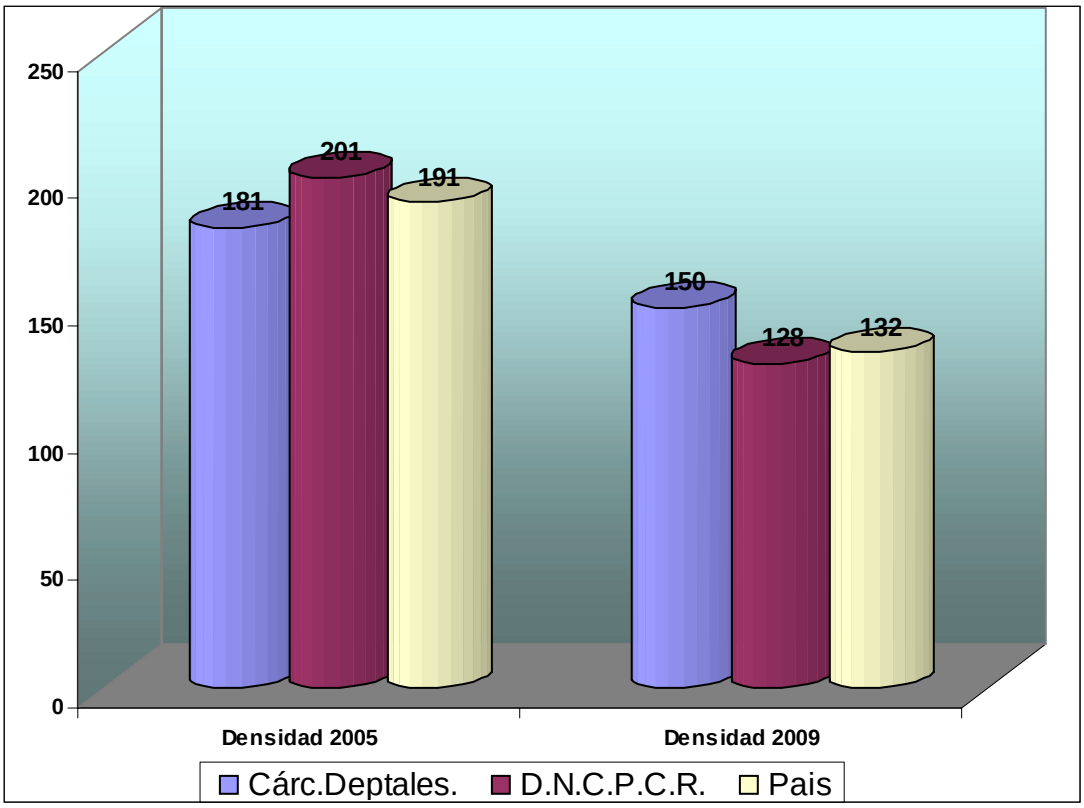
• Siete establecimientos ubicados en la zona metropolitana (los que reúnen más de la mitad de la población reclusa) dependen de la Dirección Nacional de Cárceles: Complejo Carcelario Santiago Vázquez, Penal de Libertad, La Tablada, Centro de Recuperación Nro. 2, Cárcel de Mujeres, Casa mitad de camino femenina y Unidad Nro. 8; diecinueve establecimientos departamentales ubicados en el interior del país dependen de las Jefaturas Departamentales de Policía (la mayoría de los departamentos cuentan con unidades abiertas tipo chacras) y el Centro Nacional de Rehabilitación que depende directamente de la Secretaría del Ministerio del Interior.

• Al 30 de abril de 2009 la población reclusa ascendía a 8337 personas, ubicando a Uruguay entre los países con mayor tasa de prisionización de la región (251 cada 100.000 habitantes) según las estadísticas de ILANUD

La población reclusa ha tenido un alarmante crecimiento en los últimos veinte años, el cual se detuvo puntualmente a propósito de la implementación de la ley 17.897 en setiembre de 2005 la que previó la liberación excepcional de 800 personas procesadas o condenadas por delitos no graves. Una vez culminada la implementación de esta disposición legislativa, la población reclusa continuó su sostenido incremento. (Ver gráfico).



La capacidad locativa del sistema penitenciario uruguayo se compone de 6132 plazas, por lo que la tasa de densidad penitenciaria es de 136 (nro. presos/nro. plazas, x 100). En marzo de 2005 la densidad penitenciaria llegó a alcanzar 181/100, habiendo sido abatida gracias a los esfuerzos realizados en materia de infraestructura y la habilitación de nuevas plazas.



En Marzo del año del 2005, el nuevo Gobierno de la República, *declara la **"Emergencia Humanitaria"** en todos los establecimientos carcelarios del país.* A partir de ese momento se comenzaron a implementar en forma inmediata medidas de urgencia para superar la crítica situación carcelaria, habiéndose definido a su vez, tres grandes fases para la reforma del sistema penitenciario nacional:

• **1era. fase**: Humanización y dignificación de las condiciones de reclusión de las personas privadas de libertad y de las condiciones laborales de los funcionarios/as, en particular lo que refiere al alojamiento, alimentación y atención médica.

• **2da. fase**: Unificación del sistema carcelario procurando ubicar a todos los establecimientos de reclusión bajo la órbita de la Dirección Nacional de Cárceles.

• **3era. fase:** Puesta en funcionamiento de un servicio penitenciario nacional fuera de la órbita policial.

SITUACIÓN ACTUAL DEL URUGUAY EN CASOS DE OTROS TPCID.-

Sin lugar a ninguna duda, uno de los principales problemas, al igual que en muchas cárceles de América y el Mundo, lo constituye el *hacinamiento de la población de reclusos;* esto trae una serie de problemas que son consecuencia, muchos de ellos de ésta realidad, configurando verdaderas situaciones de tratos inhumanos y degradantes en los internos.

"La sobrepoblación o hacinamiento significa que hay más de una persona donde hay espacio sólo para una, lo que implica una pena cruel, inhumana o degradante" (CARRANZA, Elías –ILANUD en "Política Criminal y Penitenciaria en América Latina, pág 8)

Por ello, se relevan de la práctica en los Centros de Reclusión, algunas manifestaciones importantes, que configuran verdaderos tratos inhumanos y degradantes, a saber:

• **El hacinamiento, como ya lo expresábamos,** constituye el mayor problema a resolver y sin duda se transforma en un trato cruel, que vulnera los derechos de las personas privadas de libertad y la seguridad del personal de custodia.

• **La higiene** es deficiente en las cárceles con sobrepoblación y entre aceptable y buena en las que no presentan un hacinamiento crítico.

• Existe un elevado nivel de **consumo de drogas** entre la población reclusa, especialmente en los centros en cuya rutina predomina el *encierro y el ocio*. No existe información que permita cuantificar la magnitud del problema.

• **La violencia** intra carcelaria.

Uso del poder disciplinario

Otras situaciones que vulneran los derechos de los privados de libertad, a pesar de la normativa legal e internacional vigente, -Regla 28(1) de las Reglas Mínimas- son las prácticas del uso del poder disciplinario, que llevan a ser verdaderos tratos crueles inhumanos y degradantes, como:

• **Celdas de aislamiento** - Entre otros aspectos, un nuevo reglamento disciplinario limitó la internación en éstas celdas, y la aplicación de sanciones colectivas. En la vida cotidiana de las prisiones subsisten algunas antiguas prácticas. Por ejemplo, en la mayoría de los establecimientos (fundamentalmente en los dos más grandes de la Capital Comcar y Penal de "Libertad") no ha variado el criterio para la aplicación del aislamiento. Se trata de *calabozos totalmente oscuros, con doble puerta de metal, sin baño ni ventilación alguna,* situados entre el módulo 1. y el módulo 2. del "Penal de Libertad".

• En algunas ocasiones continúan sin cumplirse las disposiciones preventivas que disponen el examen médico de todo interno o interna antes y durante la aplicación de medidas que impliquen el aislamiento.

Precisamente, el 19 de Noviembre del 2008, se constató la muerte por autoeliminación de una interna, en la Cárcel de Mujeres Cabildo, quien se ahorcó en un calabozo, al que había ingresado en forma voluntaria: a pesar de ello, no hubo certificado médico antes ni durante el aislamiento.

• **Sanciones colectivas.** En otros casos, con algunas variantes, hay: *suspensión de las llamadas telefónicas, suspensión de la recepción de encomiendas procedentes de los familiares, suspensión de actividades recreativas,* y otras, argumentando razones de seguridad, razones de servicio, que encubren verdaderas sanciones colectivas agraviantes.

• **Encierro en las celdas.** En 2008 se denunció ante la Comisión Especial la aplicación del encierro como norma de vida en algunos de los establecimientos del país. La permanencia durante 22 o 23 horas diarias en las celdas, pabellones, módulos o sectores, es inaceptable como práctica de control y de regulación de la disciplina y el orden.

• **Relator Sobre la Tortura de Naciones Unidas-** En Marzo de éste año 2009, el Gobierno Uruguayo, invitó al Relator de Naciones Unidas sobre la Tortura, Manfred Novak, quien descartó toda evidencia de Tortura *estrictu sensu* en las Cárceles del Uruguay, sin signos evidentes.

Respecto a la Tortura y Malos Tratos, el Relator dijo:

"Recibí pocas alegaciones de tortura en comisarías, las cuales fueron demostradas más allá de toda duda por exámenes forenses y otras pruebas. Sin embargo, recibí numerosas alegaciones creíbles de malos tratos y uso excesivo de la fuerza pública en prisiones, comisarías de policía y centros de detención de adolescentes."

• No obstante el Relator denunció "*Deplorables*" e "*infrahumanas*". Así fueron calificadas las condiciones de reclusión *en dos de las principales cárceles de Uruguay,* en el informe presentado por el *relator especial de la ONU para la tortura y otros tratos o penas crueles, inhumanos y degradantes, Manfred Nowak*. (Abril 2009)

• *Novak* mostró especial preocupación por la *superpoblación de las cárceles,* sobre todo en la Cárcel del COMCAR. Además, calificó de "alarmante" la situación de violencia inter-carcelaria que ha provocada la muerte por homicidio de tres reclusos. (Ya se han distribuido en otros centros, disminución notoria de la superpoblación.)

• "*La situación de la higiene en estas condiciones de hacinamiento, donde falta comida, y falta atención médica llevan a un situación de violencia estructural donde los levantamientos y las rebeliones son casi semanales,*" aseguró Nowak.

LOS PRINCIPIOS PARA LAS PERSONAS PRIVADAS DE LIBERTAD DE LA RELATORÌA DE LA CORTE INTERAMERICANA DE DERECHOS HUMANOS, entre otros declaran:

Principio XVII

Medidas contra el hacinamiento

La autoridad competente definirá la cantidad de plazas disponibles de cada lugar de privación de libertad conforme a los estándares vigentes en materia habitacional. Dicha información, así como la tasa de ocupación real de cada establecimiento o centro deberá ser pública, accesible y regularmente actualizada. La ley establecerá los procedimientos a través de los cuales las personas privadas de libertad, sus abogados, o las organizaciones no gubernamentales podrán impugnar los datos acerca del número de plazas de un establecimiento, o su tasa de ocupación, individual o colectivamente. En los procedimientos de impugnación deberá permitirse el trabajo de expertos independientes.

La ocupación de establecimiento por encima del número de plazas establecido será prohibida por la ley. Cuando de ello se siga la vulneración de derechos humanos, ésta deberá ser considerada una pena o trato cruel, inhumano o degradante. La ley deberá establecer los mecanismos para remediar de manera inmediata cualquier situación de alojamiento por encima del número de plazas establecido. Los jueces competentes deberán adoptar remedios adecuados en ausencia de una regulación legal efectiva.

Medidas de aislamiento

Se prohibirá, por disposición de la ley, las medidas o sanciones de aislamiento en celdas de castigo.

Estarán estrictamente prohibidas las medidas de aislamiento de las mujeres embarazadas; de las madres que conviven con sus hijos al interior de los establecimientos de privación de libertad; y de los niños y niñas privados de libertad.

El aislamiento sólo se permitirá como una medida estrictamente limitada en el tiempo y como un último recurso, cuando se demuestre que sea necesaria para salvaguardar intereses legítimos relativos a la seguridad interna de los establecimientos, y para proteger derechos fundamentales, como la vida e integridad de las mismas personas privadas de libertad o del personal de dichas instituciones.

En todo caso, las órdenes de aislamiento serán autorizadas por autoridad competente y estarán sujetas al control judicial, ya que su prolongación y aplicación inadecuada e innecesaria constituiría actos de tortura, o tratos o penas crueles, inhumanos o degradantes.

En caso de aislamiento involuntario de personas con discapacidad mental se garantizará, además, que la medida sea autorizada por un médico competente; practicada de acuerdo con procedimientos oficialmente establecidos; consignada en el registro médico individual del paciente; y notificada inmediatamente a sus familiares o representantes legales. Las personas con discapacidad mental sometidas a dicha medida estarán bajo cuidado y supervisión permanente de personal médico calificado.

4. Prohibición de sanciones colectivas

Se prohibirá por disposición de la ley la aplicación de sanciones colectivas.

5. Competencia disciplinaria

No se permitirá que las personas privadas de libertad tengan bajo su responsabilidad la ejecución de medidas disciplinarias, o la realización de actividades de custodia y vigilancia, sin perjuicio de que puedan participar en actividades educativas, religiosas, deportivas u otras similares, con participación de la comunidad, de organizaciones no gubernamentales y de otras instituciones privadas.

BUENAS PRÁCTICAS EN LA PROMOCIÓN DE LOS DDHH DE LOS PRIVADOS DE LIBERTAD, Y EN LA PREVENCIÓN DE LOS OTROS TPCID EN EL URUGUAY HOY.-

• **Ley 17.897 del año 2005: "Ley de Humanización del Sistema Carcelario"** que prevé la Redención de Pena por Trabajo y Estudio.

• **Ley 17.684 creación del Comisionado Parlamentario** para el Sistema Carcelario.

• En el 2008, se incorporaron más de 1000 plazas, lo que disminuyó la superpoblación que a pesar de ello se mantuvo por encima del límite crítico.

• **Mesas Representativas** - La elección y funcionamiento de las mesas representativas formada por delegados de los presos es una muy buena práctica de diálogo e inclusión social interna y externa. Sin perjuicio del alto grado positivo de democratización y participación de los presos en los problemas intracarcelarios= trae responsabilidades en derechos y obligaciones, en la relación preso-personal penitenciario. Se ha promovido el Derecho de Reunión y de Asociación entre los privados de Libertad.

• **Acción de Amparo** - En 2008, los presos de la Cárcel de COMCAR, instauraron una Acción de Amparo contra el Estado para efectivizar el estudio y trabajo, por lo que llegaron a un acuerdo mediante la implementación del Plan "Sembrando", que fomentará más plazas y peculios para presos.

• **Recomendación del Comisionado Parlamentario** para el futuro: Autorizar y reglamentar el uso de teléfonos celulares en los establecimientos de mínima seguridad o abiertos. Fomenta la comunicación con familiares y amigos que actúan como continentadores de la ansiedad de los presos.

• **Salud Pública-** La gestión del Ministerio de Salud Pública en COMCAR ha mejorado la atención médica y odontológica en ese establecimiento.

• **Las Comisiones de Control** parlamentarias y ONG son fundamentales en la tarea.

• **Creación de la Comisión de Cárceles** dentro de la Dirección Nacional de Defensorías Públicas (Suprema Corte de Justicia) para coadyuvar al mejoramiento y control de defensa de los DDHH. La Comisión procura fortalecer el relacionamiento con las distintas Instituciones que actúan en el Sistema Carcelario: Dirección Nacional de Cárceles, Jefaturas de Policía del Interior, Patronato Nacional de Encarcelados y Liberados, Comisionado Parlamentario para el Sistema Carcelario, Intendencias Municipales, ONGs, y sociedad en su conjunto.

¿QUÉ PODEMOS HACER PARA PREVENIR LA TORTURA?

Entre otras medidas, se pueden destacar y observar dentro de los sistemas judiciales que se relacionan con la privación de libertad, y el Derecho Penal y Procesal Penal, las siguientes:

• Mecanismos concretos de Control en la Policía y Cárceles.

• Derogación de normas que permitan celdas de confinamiento y aislamiento.

• Fortalecimiento y mayor jerarquización de los sistemas de Defensa Pública Defensores desde la instancia policial.

• Cambio de los Sistemas Procesales Penales inquisitivos a orales, públicos y acusatorios. Controlar las instrucciones policiales, donde a veces se producen importantes violaciones de DDHH de los indagados, y disminución de las garantías judiciales.

• Estrategia de democratización interna de la Policía y difusión de los DDHH.

ANTE LA INEFICACIA DEL SISTEMA CARCELARIO: REALIDAD Y REFORMAS URGENTES

(Breves apuntes para la reflexión)

• **IDEA CENTRAL**: Luchar por los DDHH de los privados de libertad, es luchar por los DDHH de toda la sociedad. Los presos siguen formando parte de la sociedad.

• Ningún ser humano, *ni uno*, sin importar cuánto lo odien o consideren que ha perdido el derecho a tener derechos, está fuera del marco jurídico de Protección de los DDHH, sea en el plano Internacional o Nacional.

• **RE-SOCIALIZAR**: No se puede pretender re-socializar o re-insertar al preso, desde el encierro y sin contacto con el mundo exterior.

• **MECANISMOS NACIONALES DE CONTROL**: examinar y mirar las Cárceles, desde la perspectiva de un ciudadano común: de tal suerte que si se ve a una persona tirada en una celda con excrementos, diga: "esto es degradante"; que si ve a una mujer desnudada y chequeada por un hombre, diga: "esto es horrible"; que si ve a un joven de 19 años, primario, recién procesado junto a muchas personas mayores y condenadas diga: "éste joven tiene que ir a otra celda", etc, etc. (Vivien Stern)

• **BUENAS PRÁCTICAS CARCELARIAS**: Hacer las réplicas de las buenas prácticas y gestiones exitosas,-*por más pequeñas que sean*-, estaremos colaborando con un verdadero proceso de intercambio social, y promoviendo la inclusión social, de esos miles y miles de privados de libertad pobres, inadaptados, enfermos, carenciados, excluidos, analfabetos, sin trabajo.

• **CÁRCELES MÁS PEQUEÑAS SON DE MEJOR GESTIÓN**: Sin duda alguna los Establecimientos Penitenciarios chicos, son de mucha mejor gestión que los grandes, y sobre todo, aquellos que puedan tener posibilidades de cultivo de la tierra, ya que ello constituye una gran labor-terapia, y es muy útil a la economía y alimentación de los propios internos.

• **APERTURA DE LA CÁRCEL A LA SOCIEDAD**: La sociedad tiene que conocer la realidad carcelaria; hay que intentar involucrar a la gente, en la mayor cantidad de tareas de trabajo, estudio, la cultura y el arte, en la Cárcel; así hacer una verdadera política de inclusión social.

• Hay que tratar de emplear más gente en la cárcel; gente para monitorear e inspeccionar; gente que pueda asesorar en temas de drogas y HIV/SIDA; gente que pueda enseñar y *acompañar*, gente de la comunidad que muestre a sus pares, que aquéllos que están en la cárcel siguen siendo parte de la sociedad, y que también son: Seres Humanos!

• **MEDIOS DE COMUNICACIÓN**: Son fundamentales en la tarea; si actúan responsablemente, sin sensacionalismos, haciendo una tarea de información objetiva, y fundamentalmente, intentando que la sociedad *penetre, atraviese, entre en la Cárcel*, como forma espontánea y natural de ayudar a la reinserción social del preso. Hacer alianzas estratégicas con los medios de comunicación masivos en éste sentido, mostrando realidades y objetivos a mejorar el sistema; solicitando trabajo y educación para los presos y presas.

"CON UNA CARCEL ABIERTA, LA SOCIEDAD SE CALMA, REFLEXIONA, y PARTICIPA DE UN QUEHACER QUE A TODOS INTERESA; PORQUE A TODOS BENEFICIA EL FRUTO DE LA PAZ Y LA JUSTICIA EN LOS PRIVADOS DE LIBERTAD" ***Dra. Jacinta Balbela***

MANDAMIENTO DEL ABOGADO

LUCHA **"Tu deber es luchar por el Derecho, pero el día en que encuentres en conflicto el Derecho con la Justicia, lucha por la Justicia."**

AGRADECIMIENTOS y REFERENCIAS BIBLIOGRÁFICAS.-

- Dra. María Noel Rodríguez, Asesora Ministerio del Interior, por el aporte de datos estadísticos actualizados.
- Dr. Álvaro Garcé García y Santos, Comisionado Parlamentario para el Sistema Carcelario del Uruguay, por facilitarnos su informe y Anexos de Fotografías.

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Article 18

1. Migrant workers and their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

2. Migrant workers and members of their families who are charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees:

(a) To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them;

(b) To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing;

(c) To be tried without undue delay;

(d) To be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to be informed, if they do not have legal assistance, of this right; and to have legal assistance assigned to them, in any case where the interests of justice so require and without payment by them in any such case if they do not have sufficient means to pay;

(e) To examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

(f) To have the free assistance of an interpreter if they cannot understand or speak the language used in court;

(g) Not to be compelled to testify against themselves or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Migrant workers and members of their families convicted of a crime shall have the right to their conviction and sentence being reviewed by a higher tribunal according to law.

International Convention on the Protection of the Rights of All Migrant Workers
and Members of their Families
Adopted 1990
Not in force

Comité des droits de l'homme des Nations unies

Nathalie Jeannin - FIACAT

J'ai été chargé de vous faire une présentation sur le travail des organisations non gouvernementales auprès du Comité des droits de l'homme des Nations unies. Et plus largement, mon propos portera sur la façon dont les ONG peuvent appuyer le travail du Comité et voir avancées leurs préoccupations par un organe des Nations unies.

Depuis l'adoption de la Déclaration universelle des droits de l'homme en 1948, les Etats sont devenus parties à neuf traités principaux réciproquement complémentaires pour appliquer les droits de l'homme. Les huit organes de traités sur les droits de l'homme qui ont été créés en vertu des dispositions du traité qu'ils sont chargés de superviser, sont des comités d'experts indépendants.

Le Comité des droits de l'homme est l'un de ces organes. Il est chargé de veiller à la mise en œuvre par les 164 Etats parties, de leurs obligations en vertu du Pacte international relatif aux droits civils et politiques et des deux Protocole facultatif s'y rapportant. Il est composé de 18 Experts indépendants. Ces experts se réunissent trois fois par an à New York ou Genève.

Comment travailler auprès du Comité ? Comment influer sur ses recommandations ? Comment l'informer de la situation des droits civils et politiques dans un pays ?

Il y a différentes façon pour la société civile d'être active auprès du Comité:
- à travers la procédure de remise de rapport;
- en aidant des particuliers à soumettre des communications individuelles;
- en aidant le Comité dans la rédaction de ses observations générales concernant des questions thématiques ou ses méthodes de travail et qui donnent son interprétation des dispositions du Pacte.

Je vais centrer mon propos uniquement sur la première, la procédure de remise de rapport. Puisque ça me parait être celle où la société civile a le plus un rôle à jouer et un rôle finalement irremplaçable.

Procédure de remise de rapport

Tous les États parties sont tenus de présenter au Comité, à intervalles réguliers, des rapports sur la mise en œuvre des droits consacrés par le Pacte qui est entré en vigueur le 23 mars 1976, presque 10 ans après son adoption par l'Assemblée générale de l'ONU. Les États parties doivent présenter un premier rapport un an après avoir adhéré au Pacte, puis à chaque fois que le Comité le leur demande, généralement tous les 4 ou 5 ans. Le Comité fait ensuite part de ses préoccupations et de ses recommandations à l'État partie sous la forme d'« observations finales ». Les rapports des Etats doivent détailler les mesures adoptées pour mettre en œuvre les droits protégés par le Pacte et indiquer les progrès réalisés par l'Etat dans l'application de ces droits.

Dans la pratique, les rapports des Etats contiennent de nombreuses informations sur la législation en vigueur, mais omettent de préciser quelles sont les mesures concrètes prises par les autorités pour mettre en œuvre les droits garantis par le Pacte. Ces rapports font souvent l'impasse sur les difficultés rencontrées dans l'application du Pacte.

C'est pourquoi, le Comité des droits de l'homme a un besoin crucial d'informations additionnelles pour lui permettre d'évaluer si les Etats s'acquittent convenablement de leurs obligations. Les ONG, et la société civile en général jouent donc un rôle essentiel dans cette procédure en permettant au Comité des droits de l'homme d'avoir une vision plus objective de la situation.

Du point de vue des ONG aussi leur participation à cette procédure revêt un certains nombres d'avantages:
C'est tout d'abord une occasion unique d'évaluer les politiques nationales relatives aux droits de l'homme. Ce processus peut également initier ou renforcer le dialogue entre les autorités étatiques et la société civile. Enfin, le rôle des ONG et de la société civile ne saurait se limiter à l'examen du rapport national, mais doit se poursuivre avec le suivi des observations finales et les recommandations adoptées par le Comité des droits de l'homme. Il y différentes étapes au cours desquelles, les ONG peuvent intervenir dans le processus d'examen d'un rapport:

Ø **Prendre part à l'élaboration de la liste de question.**
Entre le moment où l'Etat remet son rapport au Comité et le moment de son examen, il se passe souvent un ou deux an. Les experts du Comité ont donc pris l'habitude d'envoyer à l'Etat une liste de question auquel il répond soit par écrit avant la session soit juste au moment de l'examen. Cette liste de question permet une actualisation des informations contenues dans le rapport, demande des précisions sur certains points ou met l'accent sur des éléments qui n'auraient pas été suffisamment traités dans le rapport. Les ONG sont invitées à soumettre au Comité leurs préoccupations sur la situation des droits de l'homme dans leur pays, ou les points ou questions sur lesquels elles souhaiteraient des éclaircissements de la part de l'Etat.

Pour prendre un exemple: la FIACAT a soumis une contribution en août 2008, en collaboration avec son ACAT au Tchad, en vue de l'adoption de la liste de question prévue pour octobre 2008 pour un examen qui devait avoir lieu en mars 2009. Dans cette contribution nous avons attiré l'attention des experts sur le fait qu'alors qu'aucune exécution n'avait eu lieu depuis 1991, le Tchad a fusillé 9 personnes en 2003 en l'espace de quatre jours (dont 8 personnes le 6 novembre 2003) et condamné à mort 4 autres personnes. Nous les informions aussi des différentes condamnations à mort intervenues depuis 2003. Ces préoccupations ont été reprises dans la liste de questions du Comité qui demande ainsi au Tchad de : « *fournir plus d'information à propos des raisons pour lesquelles l'État partie a mis fin au moratoire relatif à la peine de mort; b) indiquer si le droit à un procès équitable a été garanti aux personnes exécutées les 6 et 9 novembre 2003 (par. 133); et c) indiquer quelles sont les infractions exactes punies de la peine de mort* ».

Ø **Informer les experts sur la situation concrète dans l'Etat examiné.**
Les ONG sont invitées à soumettre aux experts du Comité des contributions sous forme de rapports alternatifs faisant état de la mise en œuvre concrète des droits civils et politiques dans leur pays, des difficultés rencontrées, des lacunes de la législation nationale en matière de protection des droits.

Le Comité des droits de l'homme recherche des informations fiables et crédibles sur l'ensemble des dispositions du Pacte, et plus spécialement dans les domaines où les rapports d'Etats ne fournissent pas suffisamment d'explications, ou lorsque ces informations sont manifestement erronées et / ou incomplètes. Il est donc important que les rapports d'ONG puissent analyser dans quelle mesure les lois et les politiques nationales ainsi que la pratique des autorités sont conformes aux dispositions du Pacte.

Pour donner un exemple, dans le rapport que la FIACAT et l'ACAT Centrafrique ont remis au Comité en 2006 en vue de l'examen du rapport de la RCA, elles faisaient état dans leur analyse de la mise en œuvre par l'Etat de l'article 6 du Pacte de leur regret que la RCA n'ait pas saisi l'occasion de la réécriture complète du Code pénal pour supprimer les cas de recours à la peine de mort. En analysant la législation nationale, la FIACAT constatait que l'Etat n'avait fait que les restreindre alors qu'il n'a procédé à aucune exécution depuis 1981.

Les observations finales du Comité encourageaient l'Etat partie à abolir la peine capitale et à adhérer au deuxième Protocole facultatif se rapportant au Pacte.

Ø **Participer à une réunion privée avec les experts du Comité:**
Le premier jour de chaque session du Comité qui dure en général deux demi journées sur deux jours, les ONG ayant soumis un rapport alternatif sont invitées à rencontrer les membres du Comité lors d'une séance de travail privée de

deux heures qui porte sur tous les pays dont les rapports seront examinés durant la session. C'est l'occasion pour les ONG de faire part au Comité de leurs principales préoccupations, d'apporter des compléments ou une actualisation sur les informations déjà fournies et surtout de répondre aux questions des experts.

Par exemple, si un Etat vient d'abolir la peine de mort dans son droit interne, il est important de le signaler aux experts en les invitant à inciter l'Etat à ratifier dans la foulée le Protocole 2.

Les ONG peuvent également prendre l'initiative d'organiser des « breakfasts meeting » (9-9h55) et « lunch briefing » (13h05-14h) sur un pays qui doit être examiné durant la session. Ces réunions sont l'occasion de mettre l'accent sur un pays en particulier et de s'entretenir avec l'expert rapporteur sur ce pays ainsi qu'avec les membres de la task force, groupe de 5-6 membres du Comité plus particulièrement chargée de se pencher sur l'examen d'un pays. C'est l'occasion de faire connaître aux experts les points saillants des contributions soumises et de répondre à leurs questions.

Durant l'examen lui –même, les ONG n'ont pas droit à la parole. Mais il est important pour elles d'assister à la séance dans la mesure où elles peuvent ainsi réagir à ce qu'avance l'Etat et au besoin, rédiger un papier à l'attention des experts du Comité pour apporter une clarification sur un point, leur proposer de poser des questions, contester certaines réponses de l'Etat à partir de leur expérience. Ces réactions orales ou écrites peuvent être remises aux experts du Comité soit directement à la fin de la première séance soit le lendemain avant le début de la deuxième partie de l'examen.

Ø **Faire connaître les recommandations du Comité:**
Après chaque examen, le Comité fait part de ses préoccupations et de ses recommandations à l'État partie sous la forme d'«observations finales». Celles ci- sont publiées sur le site Internet du Comité. Pour permettre une plus large diffusion de ces recommandations, les ONG peuvent faire un communiqué de presse ou organiser une conférence de presse. Pour en revenir au thème de cette table ronde qui est le Deuxième Protocole au Pacte et la peine de mort…le Comité est donc l'organe chargé de la mise en ouvre du Protocole 2 par les Etats. Il surveille cette mise en œuvre essentiellement à travers à travers la procédure d'examen des rapports des Etats que je viens de vous décrire.

En effet, à travers les contributions des ONG et à la lecture des rapports des Etats, le Comité des droits de l'homme est amené à recevoir de l'information sur la situation de la peine de mort dans les Etats parties au Pacte. Il peut soit au cours du dialogue avec l'Etat soit dans ses recommandations faire des suggestions pour encadrer certaines pratiques dans les pays non abolitionnistes, soit inciter les pays rétentionistes. à abolir la peine de mort et ratifier le Protocole 2.

Voici quelques exemples de recommandations que le Comité peut adresser aux Etats en fonction de là où ils en sont vers l'abolition :

Exemple d'un pays non abolitionniste: le Botswana, lors de l'examen de son rapport initial en mars 2008, le Comité a noté avec préoccupation la pratique consistant à tenir secrète la date de l'exécution d'un condamné à mort et le fait que la dépouille du détenu exécuté n'ait pas été restituée à sa famille pour que celle-ci puisse la faire inhumer.

Exemple d'un pays abolitionniste de fait: Madagascar, lors de l'examen de son 3eme rapport périodique en mars 2007, le Comité a noté *avec préoccupation que le Code pénal prévoit un grand nombre de crimes passibles de peine de mort, y compris le vol de bovidés. Il prend note de la déclaration de l'État partie selon laquelle en pratique les peines prononcées sont systématiquement commuées en des peines d'emprisonnement (art. 6) Le Comité invite l'État à abolir officiellement la peine de mort. L'État partie est également invité à ratifier le Deuxième Protocole facultatif se rapportant au Pacte.*

Quand l'Etat a ratifié le Protocole 2, le Comité suit son application par Etat partie : ainsi session mars 2009, examen Australie (ratif 1990) : *« Le Comité note avec inquiétude le pouvoir qui reste à l'Attorney general d'autoriser, dans des cas mal définis, l'extradition d'une personne vers un Etat où cette personne peut être passible de la peine de mort; il est de même préoccupé par l'absence d'une interdiction générale de l'assistance policière internationale pour des enquête sur des crimes pouvant déboucher sur une condamnation à mort dans un autre Etat, en violation des obligations de l'Etat partie en vertu du deuxième Protocole facultatif ».*

Ø **Enfin et pour finir, la dernière étape où les ONG peuvent agir auprès du Comité, c'est en lui fournissant des informations sur le suivi des recommandations:**
La société civile a ensuite un rôle de premier plan à jouer auprès de ses autorités afin de faire pression sur elles pour que les recommandations du Comité et plus particulièrement les plus urgentes soient mises en œuvre. Elle peut ensuite rapporter les avancées constatées ou les difficultés rencontrées au Rapporteur sur le suivi des observations finales du Comité, Sir Nigel Rodley, qui a été mis en place en 2001 par le Comité.

Conclusion:
Je conclurais en vous disant que tous ces traités internationaux n'ont de réel impact que s'y la société civile s'en empare. Les ONG ont autant besoin des observations finales du Comité que celui-ci a besoin de l'expertise et de l'expérience de terrain des ONG et de leur aide dans le suivi des recommandations sur place. S'il est primordial pour les ONG de participer à la rédaction de rapports tout comme de venir témoigner et répondre aux questions des membres du Comité lors des sessions, il est important de ne pas laisser de coté de suivi de ses recommandations sur le terrain. Sinon le risque est grand que les recommandations se répètent d'une session à l'autre sans aucun changement dans la pratique.

Article 1: For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 10: States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:
(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality.

Convention on the Elimination of Discrimination against Women
Entry into Force September 1981

Covenants on Civil and Political Rights

Rev. Samuel Kawilila, Executive Director, CURE ZAMBIA.

Introduction.

The situation in prisons is the same all over Africa. In this paper I will present to you an overview of Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and People in Prison.

Human Rights.

Human Rights have been designed to protect the full range of human rights required for people despite their condition and location, for them to have a full, free, safe, secure and healthy life.

When a state ratifies one of the Covenants, it accepts solemn responsibility to apply each of the obligations embodied and to ensure the compatibility of their national laws with their international duties, in the spirit of good faith. *Also, they must report to the UN the progress, and there is a procedure through a protocol to have individuals file complaints on violations of the civil and political rights.*

For instance, most African countries are party to the *Covenants on Economic, Social and Cultural Rights*, and *Covenants on Civil and Political Rights.* Despite the ratifications of the foregoing instruments, the provisions therein are of no consequences to the individuals (especially prisoners). The root cause of the problem is the silence and non implementation of what we profess in this important matter.

One thing I have learned is that the economic, social and cultural rights are not rights that can be imposed or demanded of any state or country overnight. They are progressive rights and give the proper wording and will.

I will devote most of this talk to *Article 10* which states that *"The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation"*.

In this paper, prison is broadly defined as a building where PEOPLE are kept as a punishment for a crime they have committed, or kept while they are waiting for trial, Oxford Advanced learners Dictionary (200 Edition).

(1).Samba Sangaré, former prisoner of Mali, notes:

To the best of my knowledge, Africa did not know the system of prisons. We had forms of sanctions in the social schemes which were different from imprisonment. We learned imprisonment with the colonial system. The name of prison itself has been Africanized from a word which was originally French, the "cachot" which is called "kaso" in African language. Africans did not know what it was initially and since they did not speak French they called it "kaso". It did not exist traditionally. It is a new tradition that colonization introduced (interview with Samba Sangaré, August 12, 2002, Lafiabogou, and Bamako-Mali).

(2). In the following excerpt, Kenyan ex-prisoner Koigi wa Wamwere lets his grandmother speak to the important connections of imprisonment.

Look at us today. We are prisoners in our own huts in the white man's farm. We live enclosed like goats…Before the white man came, we never had prisons and no one was punished before guilt was established by everyone in the community and family members… And when the people killed, life was not paid for with life but with animals and labour. If you killed and were found guilty, you paid for the life you took with animals and not with your life. If you and your clan could not pay the animals, you took the dead person's place in his family. We knew nothing of the injustice

of an eye for an eye and a tooth for tooth that commits the same sins it punishes other people for.(The Journal of Pan African studies, vol.2 no.3. March 2008).

What is the Current Situation in Prisons?

The aim of a prison sentence is rehabilitation; once an offender has served a sentence (which is a punishment in itself) s/he should be prepared to rejoin society as a useful citizen. Ill-treatment of inmates by prison staff, allegedly too common in Africa, hardly contributes to rehabilitation.

We can buy arms for wars in other peoples countries, but our governments do not have enough funds to allow the Prisons Departments to ensure that the *"Covenants on Civil & Political Rights and Economic, Social and Cultural Rights"* are enjoyed by prisoners in terms of personal hygiene, clothing, bedding, food, exercise, sport, medical care and accommodation.

Many people in prison should not be there. But more people from outside do need to be there, in prison, alongside the prisoners and the personnel, showing that the prison is part of society and that prisoners are citizens, ensuring that the values of the outside world, the non-carceral society, are brought right into the prison yard and onto the prison wing. *Article Ten of the International Covenant on Civil and Political Rights* makes it clear what the ethical basis of imprisonment should be:

> *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

The African context is in violation of this article in that prisoners do not receive rehabilitative services. This may be because of overcrowding, as one of the many reasons. O*vercrowding includes the fact that people are in pre-trial status for years.*

Rehabilitation Programs.

The Prison institutions are very poorly funded by most of the African governments. Their budgets too are never considered; as a result most of the rehabilitation programs are never carried out. In many prisons there are no rehabilitation programs. In general, the prisons are not equipped for this. Sometimes, prisoners being released are more dangerous than before. The law provides for a program of rehabilitation for prisoners as they exit the prison, but in practice this does not happen.

There are some job skill development and work assignments to help to prepare for economic survival on the outside. Incarcerated persons are not paid a wage for their work. Successful rehabilitation programs worthy of emulation include the farming and carpentry projects where inmates produce food stuffs and furniture (Zambia Permanent Human Rights Commission).[1]

Due to a lack of equipment and funds, some rehabilitation activities at the Mukobeko Maximum Security Prison in Zambia, had been abandoned. Such activities included carpentry and joinery, shoe repairing, tailoring, soap making, and academic studies.[1]

At the Kabwe medium security prison in Zambia, prisoners with a teaching background provide academic education to fellow inmates from Grade 5 to GCE 'O' level. A prison officer coordinates with the Ministry of Education to ensure that the syllabus is followed.[1]

The Munsakamba Open Air Prison in Zambia has 28 hectares of land where inmates receive skills in maize and vegetable growing. At the time of the Commission's visit on 2 September, 2005, 750 x 50kg bags of maize were reported to have been produced in the previous farming season. The environment at the Open Air Prison was generally conducive to the rehabilitation of the prisoners. There was plenty of fresh air and the living quarters and surroundings were suitable. Four cells were in use where prisoners slept and lived.[1]

The Prisons Service runs both academic and literacy classes. The major problem is inadequate up-to-date books in the libraries. Apart from the academic and literacy classes, there are inmates engaged in life skills. This group lacks workshop tools and machinery. It was recommended (by the human rights commission) to revamp these trade skills to not only fulfill the requirement for the rehabilitation of prisoners but also reduce the burden on the Government for providing basic needs such as soap and uniforms. These can be made by the inmates. It was further recommended that the government should allow the prison authorities to retain at least 50% of the monies they make from their ventures for their running costs. Things like plates, spoons and cups can be purchased with the proceeds from the ventures.[1]

That is the duty of the State towards its prisoners. What does humanity and respect for the inherent dignity of the human person mean? The answer to that question lies in the body of UN instruments and instruments of other bodies such as the *African Charter on Human and Peoples' Rights*, the *American Convention on Human Rights*, and the *European Convention on Human Rights*.

My first point is that the prison should be a civilian public institution. My second is that however poor the country, and however low the standard of living, the state once it locks up a human being, has a duty to care for that person. It is no answer to say 'everyone is poor' and 'prisoners are at the end of the line, the least deserving'. All the international human rights instruments make that very clear beyond any doubt. The State has deprived them of their liberty and the State must provide for them the basics for life, food, water, clothing, bedding, light, air and health care. Above all it must protect the right to life.

Prison conditions in Zambia are harsh and life threatening. Prisons hold ten times more inmates than their original designs. This situation forces many of them to sleep on the floor. In Mazabuka prison for instance, a cell designed to house 60 inmates, accommodates about 260 people. Poor sanitation, lack of medical care, overcrowding, lack of nutrition and clean water contributes to high incidence of diseases such as cholera, tuberculosis, and diarrhea. There is also a high rate of HIV/AIDS infections at prisons in Zambia. Unfortunately, due to poor nutrition, the few available anti retroviral drugs are not effective.[2]

The problem stems from African governments' lack of money and resources to properly deal with those who break the law. There is a shortage of judges and lawyers, so the wait for trial and sentencing can be several years. As a result the prisons become clogged with the accused whose cases may never even make it for trial. Pick pockets are mixed with the murderers, and both suffer the same excruciating fate-an indefinite sentence in an already congested prison.

Inside the Prisons more than 100 men lie side by side on a concrete floor, crammed together in a small cell for 14 hours each day. They are packed so tightly that they cannot turn individually, but only in unison. When they are let out in the courtyard each morning, they are so stiff from their long night's immobile confinement that they can barely stand. The crowded conditions and shortage of food leave the men exposed to a number of communicable diseases that spread uncontrollably through the prison. (Prison Fellowship International Global Link Journal, 6, September 2006.)

The Duty of Care.

The duty of care and the duty to provide proper work for personnel, means that prisons cannot be so overcrowded and resources so stretched. Therefore, Countries in Africa, need to look again at their use of imprisonment. It can be done. In Mali, notorious prisons, especially colonial prisons, have been shut, including the death house of Taudenit, which Samba Sangaré survived. In Nigeria, human rights activist Uju Agomoh was able to get 8,000 prisoners released on human rights grounds in the late 1990s.

Kenya's notorious Police Station in Nairobi, which was an underground dungeon, has been converted into a museum; finally, the most notorious of them all, Robben Island in South Africa, today hosts thousand of tourists who receive a tour by ex-prisoners. Some of these sites have turned into sober memorial spaces of evil and redemption, just as Buchenwald and Auschwitz were important markers for German youth to reflect on the Holocausts. The time has

come for seeking the truth, and achieving reconciliation and restoring hope and humanity. (The Journal of Pan African Studies, Vol. 2 #3, March 2008.)

Imprisonment is costly and unnecessary; imprisonment is damaging to the social fabric. Prisons are a threat to public health and in most African countries a short prison sentence can become a death sentence.

Father David Cullen is a White Father. Who works in Zambia and has been here for many years. He writes to his friends. One recent communication described his daily work:

> "Last Wednesday I said Mass in one of the four prisons I go to, Mwembeshi, some 50 km out of the city. I celebrate the Mass on a table under a tree and the inmates sit on the ground and are very attentive. The majority of them surely are not Catholics. I take a group from the parish, usually to do the singing, many of them coming from our shantytown, Misisi. They like to collect money to give the prisoners something. Last Wednesday each of the 250 prisoners got a little packet of salt and a piece of fairy soap, each bar being cut into five pieces. The prison authorities don't give out soap and often not salt to put into the dull, meager one meal a day the men get, so the inmates were delighted with what they received. Scabies is a big problem and at times we take what is required to kill the lice and bed bugs.
>
> Last Thursday I went to the women's prison for Mass, again under a tree and competing with a strong wind. I always take a couple of drums with me, As usual there were a few problems, food and clothing for the children with their mothers, contacting lawyers who seem slow in coming to see their clients…
>
> Last Sunday I was in still another prison, the Central. There some 1300 men at least are herded into a very small space, with no room to lie down at night because of the cramped conditions. After Mass again I had a list of needs, the most urgent being that the leader of the Catholic Community, Moses, has to go for an operation next week, and has to find about £7 to pay for it. Also there are 78 TB patients in the prison, and with the congestion, it surely gets passed on to others. Also there is a chronic outbreak of scabies, and about three quarters of the prison population have rashes on their bodies. They had hoped to control it sometime ago, but again it's got the upper hand."

A man doing great work – but he should not have to do such work. And the prisoners should not be living in such conditions.

What Is Being Done?

A start has to be made somewhere and it has been made. Several steps are being taken to redress the situation. I will briefly mention some of the problems that are being tackled.

> · A prison management group has been formed which meets regularly to discuss various problems and attempts to solve them.
>
> · Formation of the National Parole Board, which coordinates activities related to, and recommends the release of prisoners on parole.
>
> · Discharge of terminally ill prisoners. The commissioner may, with the approval of the Minister, order the discharge from prison of any terminally ill prisoner on the recommendation of the Regional Commanding Officer and the medical officer responsible for the health care of the prisoner.
>
> · Magistrates, Town Clerks, Council Secretaries, and members of the Human Rights Commission shall be visiting justices of the prison situations in the area in which they normally exercise jurisdiction.[2]

As a result of this exercise; in my own town, Chingola in Zambia, *The Post*, a daily tabloid, reported that, "Chingola prisoners use plastic bags as plates.[3] This was revealed after a high court judge visited the prison.

· In Malawi, Penal Reform International and the Malawi Prison Service have developed a cost-effective model of integrated farming in prison which has had a direct impact on the health of prisoners. Such programmes provide prisoners with useful farming skills which can assist them in reintegration after release. (PRI .http://www.pri.ge/Health_inpriosn.html[†])

What Can Be Done? Recommendations, Conclusions.

Introduce Restorative Justice programmes that have the potential to reduce the torrent of prison overcrowding and save thousands from inhumane living conditions in which 1 in 60 will die from disease or malnourishment.

Such a program is to install trained mediators who will work with offenders of petty crimes and their victims to settle the matter out of court. If someone steals a goat, for example, he must pay his victim the cost of the goat or work off the payment in an agreed upon way. The victim is suitably compensated and the offender stays out of the massively overcrowded prison system. This program could be arranged to work with the government and court systems to mediate crimes of theft, land disputes, trespassing and other non-violent offences.

Training 50 mediators, who in turn handle as many as 50-70 cases per year, would possibly keep 2,500-3,000 people out of prison.

Prisons have a way of leaving indelible imprints, and as the saying goes "you can leave prison, but prison will never leave you." Much work needs to be done with the respect to post-traumatic stress disorder which faces all ex-prisoners, and even more so, those who faced torture in addition to the denial of liberty. Trauma centers, with an African holistic, traditional, and spiritual philosophy, ought to be established all over the continent.

We need to advocate for rehabilitation and demarcation, and an increased number of workshops and conferences on Penal Abolition, where scholars and practitioners share and gather information on how to minimize the use of imprisonment as a corrective measure.

And worthy of a special note, Mali is one of the African countries that has a low incarceration rate and is deeply invested in upholding its traditional, pre-colonial restorative justice practices, side by side in its adherence to the French criminal justice system (cf. Nagel, 2007).

The Permanent Human Rights Commission should have one of its 'Terms of Reference', to educate citizens on Human Rights issues. The commission should advocate an inclusion of a human rights topic in the rehabilitation curriculum of prisoners. This is the only way to see sustainable success in human rights awareness, respect and observance of the same.

Perhaps the biggest challenge for prison reformers will be to convince the courts, prison administrators, politicians and the general public that it is really worthwhile to offer prisoners programs that facilitate their rehabilitation. This means that on all levels people become aware of the fact that mere 'warehousing' prisoners in 'universities of crime' does not diminish recidivism at all. The new Penal Code should emphasise *rehabilitation and reintegration* as the most important justifications for imprisonment. The opportunity to acquire some vocational skills and/or some basic education during their time in prison, to learn something useful, combined with the support of a rehabilitation or probation service after release, can give ex-convicts the chance to live a crime-free life and will enhance the safety of the public. Mere imprisonment doesn't solve anything, not for the convict, his victim, nor society. Most people are aware of this, but for many this will require a radical change in thinking about crime and criminals and how to deal with them.

Resources.

[1] *Human Rights in Zambia. Central Province Prison Report.* www.hrc.org.zm
[2] *Shadow Report on Zambia,* Center for Human Rights, University of Pretoria, 2007.
[3] Prisons (Amendment). Government OF ZAMBIA. ACT No. 16 of 2004.
[4] *The Post*, daily tabloid, Wednesday June 3, 2009,
[5] *The Journal of Pan African Studies, Vol. 2,* no. 3 March, 2008.'
[6] *Prison Fellowship International Global Link Journal,* September 2006.
[7] PRI. http://www.pri.ge/Health_inprison.html

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

Else Marie Knudsen, John Howard Society of Ontario, Canada

Canada is recognized around the world as a leader in many aspects of human rights provision and diplomacy, and our criminal justice system is often lauded internationally. Much of this praise is deserved; Canada ranks high on the Human Development Index, and we enjoy a high standard of living relative to many of the countries represented here today.[1] And our criminal justice system, specifically, is largely free from some of the glaring human rights violations that persist elsewhere, such as enforced disappearances, death penalty or torture.

But by comparing ourselves favourably in this way, we conveniently let ourselves off the hook, so to speak. There should never be a reprieve from thinking critically about how we are living up to our capacity to provide prison services that are just, effective at preventing recidivism and improving well-being, and live up to the text and spirit of our human rights obligations. In fact, the state of criminal justice services in Canada is of high concern to advocates for human rights and social justice. In its treatment of remanded prisoners, which I'll be discussing in a moment, Canada violates a number of obligations and standards outlined in international human rights instruments.

But first, some political context: Canada normally teeters between the punitive, "tough on crime" US model of criminal justice policy and the relatively more rehabilitation-focused system in Europe. However, some very punitive legislation has been introduced by our current Conservative government, such as mandatory minimum sentencing legislation,[2] just as many US states have begun to see the massive financial and social costs of these types of laws and are changing direction.[3] Arguments by my organization and some others that these approaches are ineffective, expensive and unjust have no traction and we find little room within mainstream discourses, to invoke the ample research evidence that shows that 'tough on crime' policies will lead us nowhere good.

Also important for this discussion is the context of our human rights obligations: Canada has ratified all major human rights instruments (except for the Convention on Migrant Workers[4]), including the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights, the latter of which closely informs and plays a role in interpreting our Canadian Charter of Rights and Freedoms[5] which is our constitutional guarantee of individual rights. Canada subscribed to the Standard Minimum Rules for the treatment of prisoners, and the Basic Principles and Body of Principles for the Treatment of Prisoners. Although none of these are legally binding in Canada, the courts have indicated that government services are expected to be consistent with and respectful of the values of international human rights instruments.[6]

The issue I'd like to address specifically today in order to illustrate Canada's relationship with these instruments is that of remanded prisoners, meaning those incarcerated prior to conviction or sentencing. In the last decade and a half, we have seen a dramatic increase in the rates of remanded prisoners, and today, a full 65% of those incarcerated in my home province of Ontario on any given day are on remand.[7]

This increased recourse to pretrial detention, in the absence of any increase in rates of crime or victimization,[8] suggests that it is the decision-making by police and the courts that has somehow changed. The principles governing pretrial detention are clearly set out in the International Covenant on Civil and Political Rights, thus the concern is that there may be increasing instances of pretrial detention that cannot be justified as reasonable or lawful as defined in the Covenant.

Remand prisoners in Canada are held by default in maximum security conditions, meaning that their movements are highly restricted and monitored, they have visits with family behind glass, and they have extremely limited time

outside of their cells or ranges (often 12 hours a day in their cells, 20 minutes of yard time and the remainder on the range).[9] This clearly contravenes the Standard Minimum Rules for the Treatment of Prisoners and other documents which dictate that classification must be based on assessments of the individual, and that people imprisoned under pre-trial detention are to be treated in a manner that reflects their different status from convicted prisoners[10] — a rule which flows from the presumption of innocence that is outlined in the International Covenant on Civil and Political Rights.

But instead of being afforded better conditions and freer access to the community, remand prisoners face some of the worst conditions on offer in Canadian prisons. Detention centres are virtually all massively overcrowded. Across the country, the majority of remand prisoners are double or triple bunked in small cells often built for one and some sleep on foam pads on the floor. This poses threats to the safety and dignity of prisoners, which are obligations under the International Covenant on Civil and Political Rights, but also to the safety of correctional staff, who are tasked with managing the tension and violence that results from overcrowding.

Health is a significant concern inside our prisons, with massively disproportionate rates of HIV, Hep C, TB, addiction and mental health concerns.[11] The Committee on Economic, Social and Cultural Rights has asserted that States are under the obligation to respect the right to health of prisoners by refraining from denying equal access to preventative and curative health services.[12] However health services in Canadian prisons fall well below the standards of those offered in the community.[13]

No structured recreation exists nor is there access to gymnasiums or meaningful equipment. Virtually no programming is available.[14] Few teachers or opportunities for education exist, despite the rights to education provided in the Universal Declaration, and the Economic and Social Council's interpretation that in prison, education should be central to prison life and include a variety of tailored and creative skill-building activities.[15]

The International Covenant on Economic, Social and Cultural Rights also asserts that states must respect the rights to work of everyone, including prisoners, by both prohibiting forced labour and refraining from denying equal access to "decent" work. In my province of Ontario, however, remanded prisoners are prohibited from earning any money. Any work opportunities that do exist are informal and the going rate for doing menial work in the facility, I am told, is a bag of chips and a can of pop. This can hardly be considered meaningful, decent or rehabilitative work, and most certainly does not fulfill the obligation of the Covenant.

A perennial concern raised under this Covenant is the treatment of Canada's Aboriginal people, whose enjoyment of Economic, Social and Cultural Rights are in general much lower that the rest of the population. Aboriginal people are vastly overrepresented in the prison system and our federal Correction Investigator has reported on the systemic and institutional discrimination they face in the prison system.[16] Indeed racialized communities are overrepresented in all aspects of our criminal justice system.[17] The UN Economic and Social Council Working Group on Arbitrary Detention, in its recent visit to Canada, noted that increased use of remand disparately affects a number of vulnerable social groups, such as racialized people and those with mental health concerns.[18]

The necessary solutions are varied, of course, and involve policy and legal reforms. Primarily, the spiraling rate of entry into the remand system must stop, which can only be affected by the practices of police, Crown and defense attorneys and the judiciary.

A solution that is strongly advocated by my agency is the increased use of community-based alternatives to incarceration, such as restorative justice, bail programs and diversion measures. However, demand for these programs vastly outstrips their capacity in most communities, and some concerns exist with regard to police and Crown willingness to refer.[19]

A related solution is the increased use of specialty courts, such as drug treatment, mental health or Aboriginal-focused courts which now exist in Toronto.[20] These courts have specially trained Crown attorneys and judiciary, and access to specialized treatment and diversion options. More broadly, they have a better capacity to understand the issues faced by these marginalized groups and to be mindful about how traditional criteria for granting bail might be inappropriate for certain groups/needs.

Some Canadian criminal court judges have attempted to highlight and protest the harsh conditions faced by remanded prisoners by giving enhanced credit for time served in pre-sentence custody. Rather than address these, however, our Conservative current government has tabled a bill to limit judge's discretion in giving enhanced credit for time served.[21]

Opportunities for reform through legal or quasi-judicial avenues, such as challenging to the constitutionality of aspects of the prison service through the court system (for example, the default maximum security classification), appealing to the Canadian Human Rights Commission or using international human rights processes like a complaint to the UN Human Rights Committee are important and promising. But these solutions are difficult, slow and expensive. The Optional Protocol on Economic, Social and Political Rights,[22] to be signed this fall, may pose some interesting opportunities if Canada signs.

Fundamentally, human rights are intended to protect and respect human dignity. And in order to be meaningful for prisoners, these rights must be endemic to the entire criminal justice system. Prisoners don't have more human rights than other people, but human rights are more important in prisons than they are in other places because it is there that they can be most easily violated. And, to paraphrase the great Eleanor Roosevelt, if human rights don't matter everywhere, they don't matter anywhere.

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Civil and Political Rights of People in Prison

Franz Kurz - Registered Society for the Support of Offenders

Association for Probation and and Offenders Assistance, Germany

Presented June 24 afternoon

There is interaction between the individual and the social community, and the progress of this process is exemplified with the following:

- The self-finding awareness as an 'I' within the community of 'WE';

- The 'I' are given names by surrounding people from the first name on to following names and titles along life's way. while the process of individualization goes on;

- Imprisoning is neither a helping process to the individual who has been named prisoner, nor is it a help in keeping together a society. Excluding a fellow citizen from voting rights exemplifies the tendency of a society to split into sections (separating the black from the white sheep).

We acknowledge and actually have to accept the fact of crisis in the life of an individual from the beginning of life on, such as teething, second dentition, puberty, until maturity (generally assumed between 18 to 21 years of age, which age leads to a different application of the law. Still, the maturation goes on after 21, and continues on through one's whole life.

In a similar manner, we accept the character-giving processes of nations rising from petty states to national associations. The best example is Europe's history. Steps of development went through crisis periods often named Revolutions. Revolutions are long lasting processes. Legal decisions also portray steps in development; such as the MIRANDA decision from Miranda v. Arizona (1963) via Justice Scalia to Judge Marsh, OR (2007).

Awareness of dynamic processes should make us more lenient when contemplating an individual as a component of society, and should ultimately make the society seek for alternatives in punishment. An example was given by Finland after they became free from the Russian dictatorship. Read the article "Today Finland Is Soft on Crime," by Dan Gardner in *The Ottawa Citizen*, Mar. 18, 2002.

Principle 17 (1): A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

Principle 37: A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delayupon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have a right to make a statement on the treatment received by him while in custody.

Body of Principles for the Protection of All Persons
under any Form of Detention or Imprisonment
Adopted by General Assembly, December 1988

Enforcing the Standard Minimum Rules:

The Lack of It in Nigerian Prisons

Rev. Fr. E. Ade Owoeye, Chaplain General of the Catholic Prison Chaplains, Nigeria

> *There is nothing cheering about prison life. The buildings are dull; the cells are semi-dark …* (Awolowo, O; 1985)
>
> "*Our little cell rooms measured about seven feet by eight. We would bathe, sleep, eat, defecate, piss, play and pray in there. For us it was our entire world*" (An inmate's testimony in Amnesty International's research; Nigeria: Prisoners' rights systematically flouted, 2008)

Introduction.

The modern prison system in Nigeria dates back to the year 1872 (Okunola, R.A; Aderinto, A.A and Atere, A.A, 2002) and it thus predates Nigeria's membership of the United Nations Organization, and her ratification of several international and regional human rights instruments designed to guarantee the UN Universal Declaration of Human Rights. One of such instruments is the Standard Minimum Rules for the Treatment of Prisoners adopted by the first UN Congress on the Prevention of Crime and Treatment of Offenders, in Geneva, 1955. These rules were targeted at reducing crime and ensuring efficient and effective criminal justice systems for those nations in agreement. However, the above testimonies are unfortunately a reflection of the pathetic state of Nigerian prisons and their institutional framework of management. The condition of *anomie* (Durkheim, 1951) evident in this correctional institution is most vivid in its inability to ensure required compliance with the standard minimum rules governing the treatment of prisoners. The fundamental human rights of every citizen is neither diminished nor denied in the event of detention, imprisonment or incarceration. The obligation to extend these rights to prisoners is stated accordingly in the Compendium of UN Basic Principles for the treatment of Prisoners (Principle 5) as follows:

> *"Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedom set out in the Universal Declaration of Human Rights, and, where the state concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and Optional Protocol thereto, as well as such other rights as are set out in other United Nations Covenants"*

So far, Nigeria's performance in ensuring these rights by implementing appropriately the provisions of the *minimum rules* leaves much to be desired. An array of factors responsible for this unimpressive performance will be discussed in this paper. However, before the exposition on the factors, conditions prevalent in Nigerian prisons will be compared with a number of the minimum rules by citing empirical cases to enable comprehensive assessment and context specific recommendations.

Conditions Prevalent in Nigerian Prisons.

Prisons everywhere are set-up to protect members of the society from "what are thought to be intentional dangers" or "law-abiding citizens from the 'undesirables'" (Okunola, *et al*, 2002). Consequently, the welfare of the prisoner is less paramount (Goffman, 1961). This perhaps reflects the situation in most prisons in Nigeria where the attitude and the practice regard this *total institution* as a place for the expendables rather than a correctional community.

The first thing easily noticeable about Nigeria prisons is the progressive and aggressive dilapidation of the structures (Adelola, 1994; CLO, 1995). According to Amnesty International (2008), four of every five Nigerian prisons were built before 1950, "Many are in need of renovation: Buildings are no longer in use, ceilings are about to collapse…sanitary facilities have broken down, there are problems with its electricity supply and several lack modern drainage facilities". This is compounded by overcrowding with statistical rates ranging from 10% - 58% (Okunola *et al*, 2002) and 40% - 300% (Amnesty International, 2002; Google, 2004) thus contravening the minimum standard of a prisoner per cell

under normal situations. Also, it exceeds expectations even for temporary overpopulation that is due ordinarily to 'inmates awaiting trial'.

Awaiting trial inmates constitute an alarming proportion of the overcrowded population of Nigerian prisons (Adelola, 1994:127; Google, 2004; Amnesty International, 2008). About 65% of detainees are awaiting trial persons (Google, 2004; Amnesty International, 2008). Specifically, for instance, Ikoyi prison has an overcrowding rate of 94%, and Kuje 84% (Amnesty International, 2008). This deplorable situation is a product of a cancerous judicial and police system. The use of 'holding charge' remains the practice in the lower courts, an act regarded as constitutionally acceptable by the Supreme Court of Nigeria. An audit report of the prisons showed that 40% of awaiting trial inmates was due to holding charges. Suspects of capital offences are unconstitutionally brought before a magistrate that lacks the jurisdiction to prosecute such offences, rather than report such cases to the Ministry of Justice. A 14year old boy suspected of murder in 2001 was held on holding charge for 6years in prison but was brought before a magistrate court once. He was awaiting a police investigation painfully in the midst of 70 adult men who were equally awaiting trial. Awaiting trial detainees are further swelled by 'excessive delay' before a case is taken to court. The reasonable time frame of 24 hours is hardly ever met; cases of bribery to accelerate commencement of trials are also prevalent (Amnesty International, 2008). The time taken to commence trial is unusually long causing prisoners to suffer double jeopardy.

Furthermore, the *minimum rule* prohibits unlawful detention of people categorized as 'civil lunatics' along with 'prisoners under sentence'. Inadequate medical psychiatric provision is the case in Nigerian prisons. Amnesty International (2008) found that inmates with mental problems either diagnosed or brought in are detained with sentenced criminals, further dehumanizing, rather than reforming them. A total of 341 mentally ill inmates were identified through prison audit, some without any criminal case except for family stigmatization. It was also reported that of the 861 inmates in Enugu prison, 119 are mentally ill, and they had little or no access to medical treatment. Women were reported to be less cared for, compared to men. A case in point is a mentally ill lady who spent about three years in detention without medical attention. She was brought to the prison by her brother because he could no longer cope with her condition. In her words, "We slept on the floor; they did not allow us to go out."

One of the most dehumanizing acts that trample on prisoners, human rights is 'torture'. Section (31) of the *minimum rules* completely prohibits all "cruel, inhuman and degrading punishments" against prisoners. The use of torture has been reported in Nigerian prisons. Prisoners are beaten on the slightest provocation, some are placed in solitary confinement for long periods and chained in their cells, and women are not excluded from this treatment, either. However, Nigerian police cells are one of those most reputed for torture of the accused and criminals (Killander, 2008). They employ torture usually to 'coerce' detainees into accepting charges without proper investigation. Inmates in Kano Central prison said they were brutalised by Criminal Investigation officers and their police counterparts; they hang prisoners up by their cuffs, break their legs with sticks and deform their teeth from torture (Amnesty International, 2008).As quoted in Amnesty International's report, a prison official lamented "[Torture] is one of the problems we are facing with the police. At times, they are just beating people. They just beat them up".

Although the general rules of treatment of prisoners are applicable to female inmates, there are exceptions to the treatment of female prisoners. Section (8) (a) stipulates that men and women detainees should have separate living quarters, while section (23) sub-section (1) demands that pre-natal, post-natal, nursery facilities staffed by qualified persons be provided for female inmates in the event that they deliver in the prison. The situation in Nigerian prisons is pathetic. Women prisoners have been reported to be detained with men and hardened criminals especially in rural areas with untold degree of consequences or abuses (Google, 2004). In Nigeria, female prisoners who give birth in prison are not officially catered to; there is hardly any provision for them and their children.

According to Okunola (2002:349), the distinction evident in the categorization of offenders into young/juvenile, and adult offenders is incumbent upon "the humanitarian and paternalistic principles with strong political overtones in favour of the child". Hence the child is referred to as a "wrong doer, not an accused" and "the pronouncement is an order, not a judgment" thus maintaining both a welfare and a judicial approach. It follows therefore that imprisonment of the young should reflect the principles above. However, young offenders in Nigerian prisons are maligned and treated with contempt; detained with convicts, tortured and exposed to inhumane conditions. The findings of Amnesty International in this regard is instructive. It revealed that a significant proportion of young offenders entered the

prison at early ages (as early as 13), the majority are awaiting trial for as long as eight years, most had no legal representation and are incarcerated in prisons rather than correctional institutions for juveniles, contravening the provisions of article (13) and (26) of the *minimum rules* on the administration of juvenile justice.

A host of other degrading and inhuman conditions contravening daily the provisions of the *minimum rules* regarding the treatment of prisoners abound. Adelola (1994:123) had reported that overcrowding creates health problems for inmates and that most medical treatments are limited to the prescription of analgesics. Inmates who desire better drugs have to supply them personally. Amnesty International (2008) in its findings shows that, most prisons in Nigeria have clinics, while the larger prisons have hospitals. These centres lack mosquito nets for the prevention of malaria, special units for emergency and TB cases, and the drugs are unaffordable. A lot of inmates' suffer from skin related diseases, asthma, diabetes, infections or lice. Even so, prison officials collect kickbacks for inmates to visit the clinic.

Sanitary and personal hygiene facilities remain in a state of disrepair. Civil Liberties Organisation (1995:37) had mentioned the terrible inhuman conditions which prisoners were made to experience. These ranged from "spasmodic or inadequate water supply, gross or non-availability of soap, to outright refusal on the part of prison officials to avail prisoners with necessary facilities" (Okunola, *et al*, 2002:326; Amnesty International, 2008). Worse still, inmates sleep in turns due to congestion, sometimes without beds or bedding or both, and in the case of those awaiting trials, on ordinary old blankets or on the bare floor (CLO, 1995:32; Amnesty International, 2008). Some even sleep standing, while others pass the night "sitting at 'post' i.e resting the back against the wall with legs akimbo while arms rest on the knees thereby making dozing a substitute for sleep due to lack of space (Adelola, 1994). A prison guard opined that "the supplies come from Abuja. They only supply for the number of the prison capacity" an indication that awaiting trial detainees are hardly considered in prison provisions.

Quality and quantity of food available to prisoners are grossly inadequate. At present, a paltry sum of N200 per inmate per day is provided for meals, most of the cooking facilities are in a sorry state, leading to meals being prepared with fuel wood in open airspace. The meals are mostly carbohydrate in nature (Adelola, 1994:136; Amnesty International, 2008) and can best be described as "starvation diet" (Okunola, *et al*, 2002). Inmates complain terribly about the quantity and quality of food given, saying it is unwholesome, unhealthy and sometimes unfit for dogs.

If the overall purpose of imprisonment is the reformation of the deviant, education becomes central to this objective. To this end, vocational and recreational facilities are provided. Most of these facilities are non-functional and, where available, they are grossly inadequate (Okunola, *et al*, 2002). The majority are not mentally engaged; consequently, they become a burden unto themselves and the society. The few available facilities are usually reserved for prisoners on death row; religious worship is also restricted for this particular category of inmates. Prisoners bribe their way to be taken to court on trial days because of inadequate vehicles for conveyance. Most of the prisoners, particularly awaiting trial detainees, have no legal representation, have no money to pay fines, thus, they are remanded in prison. Incessant adjournment characterizes the Nigerian judicial system especially when legal aid lawyers are few. This is despite a constitutional guarantee of legal representation for all detainees who cannot afford an attorney through the Legal Aid Act. The malaise in Nigerian prisons includes, but is not limited to, these. The Amnesty International research on conditions of prisons in Nigeria provides a detailed account. There is a need to highlight some of the factors responsible for the above situation.

Factors Hindering Implementation of the Minimum Rules for the Treatment of Prisoners in Nigeria.

Several factors hamper the implementation of the minimum rules affecting the treatment of prisoners in Nigeria. For the purpose of this presentation and lack of space, these factors are highlighted below.

(1) Governmental neglect of prisons: The Nigerian government has over the years neglected the criminal justice system which has led to extensive decay. Funding is stagnated and when available, irregular. There is no proper accountability, and corruption is the order of the day. Even in terms of policies, it lacks the will-power to implement change-oriented policies (Amnesty International, 2008).

(2) Lack of adequate and competent staffs: This is an offshoot of the preceding point. Staff ratio to inmates is inadequate and unevenly distributed; most lack the competency to manage a total institution like the prison. A lot of them possess little or no qualification required for such a sensitive task.

(3) Cultural Beliefs and Practices: Stigmatization of the mentally ill by members of the society on the basis of cultural beliefs has contributed to the sufferings of innocent detainees. This is fairly common in the eastern region of the country. Hence the relative high proportion of mentally ill inmates in that area.

(4) Poor Remuneration: The remuneration of prison staffs is inadequate thereby predisposing them to corruption.

(5) Dilapidated Prison Structures and facilities: Most of the prison structures are old and their facilities are likewise mal-functional to ensure reformation and correction.

(6) Inadequate Legal Representation: Legal Aid Lawyers are inadequate due perhaps to unattractive nature of the endeavour.

Conclusion.

It is rather unfortunate that prisoners in Nigeria experience harsh and inhumane conditions far below the minimum expectations for human survival. Evidences from the prisons via accounts and researches paint a grim picture of the country's supposedly reform-oriented institution, and if these facts are anything to go by, the future remains utterly gloomy. The government takes the majority of blame because of her unimpressive attitude and behaviour towards prison and prisoners' management. A host of policies developed by committees and commissions have not been effectively and efficiently implemented; perhaps because of lack of the will to act.

It is glaring that the activities of prison officials contribute to the unpalatable nature of Nigeria prisons. Their high-handedness and sometimes, 'ignorance' on their part of the *minimum rules is* demonstrated in the way they treat the prisoners. Criminal justice system - the police and the judiciary – are usually the first port of call, they set precedences that contravene the fundamental rights of the prisoners. The use of torture and holding charge to elicit confessions from detainees and to deprive them of the right to legal representation, is disheartening.

There is a need to improve prison conditions in Nigeria to reflect its primary aim which, is to reform. Government should take affirmative action to revamp the prison system in Nigeria. Prison reform is not enough; periodic monitoring and evaluation exercises should be embarked on, in order to identify areas requiring immediate attention. Training and retaining exercises and courses should be organised for the police, judicial and prison officials to bring them in line with international best practices. The relevant agencies should be adequately remunerated to forestall or reduce corruption in prisons. In particular, legal aid practitioners should be offered attractive packages to encourage people into the profession in order to ensure adequate and timely representation for detainees.

Finally, there is a need to educate, encourage and empower the public about the rights and privileges of prisoners whether sentenced, awaiting trial or on death row. This will help to reduce the abuse of prisoners' rights because outside persons can act as agents of change or can be activists that ensure that a fellow human is fairly treated. This will also help to reduce bias due to beliefs about health status, particularly in the case of the mentally ill. If prison conditions are suitable for inmates to inhabit, it will reduce recidivism considerably, and also improve humanity.

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Voting Rights of Prisoners

Fr, Anthony J. Ranada SVD

President Emeritus, PRESO FOUNDATION

Due to the PRESO (Prisoners' Restorative Service Operations) Foundation's advocacy and networking with other GOs and NGOs, our Philippine Commission on Elections sitting *en banc* has recognized last May 26, 2009 (auspiciously before the International Prison Reforms Worldwide Conference June 22-24) the voting rights of prisoners under trial and will exercise this right come the next immediate elections on May 2010 in which there will be national elections (Philippine President and Vice-President, 12 of 24 Senators) as well as local elections (85 Congressmen of various districts, Governors of 65 Provinces, Town and City Mayors, their Council and the Heads and Council of Barangays will be up for elections).

The Barangays are the smallest unit of government /governance in the Philippines and are 32,000 in number. It is of interest to state that under the Barangay Conciliation Law passed as early as during President Ferdinand Marcos time (1965-1986), Barangay community members who may bring a case against one another for assault, alleged robbery or vandalism, altercation due to misunderstandings, physical injuries, libel, etc.) may not bring a case before the Courts of Justice (Municipal/Metropolitian or Regional Trial Courts) without a certification from the Barangay Chairman that they have tried the conciliation methods on the Barangay level c/o the Barangay Chair himself that they have tried to conciliate the matter and have failed. Many times, the conciliation efforts on the Barangay level succeed and thus, reduce the clogged dockets of the courts of justice and prevent also people being jailed unnecessarily, before trial and conviction or acquittal.

The next advocacy that is about to bear fruit is a new Quezon City Jail with facilities that are humane and more in line with UN Space Requirements for the Incarcerated (right now it's 320% congested, with 30 toilet bowls for 3200 male prisoners).

We'll start soon advocating for the revision of the Revised Penal Code that bans convicted prisoners from voting till 5 years after they are released. It should take the ideal form of giving even the convicted the right to vote or by stages like giving the convicted the right to vote upon release.

Thanks for any action on this matter.

The Office of Senior COMELEC Commissioner Rene V. Sarmiento and currently President of PRESO Foundation has copy furnished for his appreciation and corrections, as well as to provide, if feasible to do so, the documented acts of the Comelec en banc on this matter.

Article 20: Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

–American Declaration of the Rights and Duties of Man
Bogota, Colombia 1948

Convention On

the Elimination of all Forms of Racial Discrimination

Sylvester Terhemen Uhaa, Director, International CURE, Nigeria

My choice of this topic is informed by my experiences of discriminatory attitudes of friends, family members and society against prisoners and ex prisoners within my eight years of prison work, particularly during our family-tracing visits aimed at re-uniting prisoners and ex-prisoners with their families for the purposes of family support for those in prison and for the rehabilitation and reintegration of released prisoners to society.

Granted that the *UN Convention on the Elimination of all Forms of Racial Discrimination* focuses on race since its primary aim is to eliminate racial discrimination among member nations to the Convention, it condemns any form of discrimination:

> "Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings……..for the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion or status."

After all, the United Nations cannot condemn racial prejudices and discrimination among member nations to the Convention and allow discrimination against groups within member nations. In fact, it is only when the UN and we condemn discrimination and fight to eliminate it in all forms within our bothers that we and the UN can feel justified to condemn racial discrimination across borders. This, in biblical terms means removing the wooden beam in our own eyes before noticing the splinter in our brother's eye. "Why do you notice the splinter in your brother's eye, but do not perceive the wooden beam in your own? How can you say to your brother, 'Brother, let me remove that splinter in your eye,' when you do not even notice the wooden beam in your own eye? You hypocrite! Remove the wooden beam from your eye first; then you will see clearly to remove the splinter in your brother's eye" (Luke 6:41-42). In other words, how can member nations to the Convention on the Elimination of All Forms of Racial Discrimination so beautifully condemn racial discriminations in all its forms, but allow discrimination against groups such as prisoners and ex-prisoners within their territories? Have the member States forgotten the Golden Rule – do to others what you would like done to you?

My dear friends in the struggle for criminal justice and prison reforms in the world, one of the obstacles to the success of our work to achieve these reforms is discrimination and prejudices against prisoners and ex-prisoners, beginning at the point of arrest when they are already considered criminals and treated as such by their family members, friends, the public, the security operatives and the prison officials who receive them and keep them in prison for many years under harsh, inhuman, degrading and crude conditions without any proof of guilt against them by a competent court of law.

Within the last two years, CURE Nigeria has compiled a long list of inmates, convicted and pre-trial that have not been visited by their friends, family members, employers, church members since they had been arrested by the police. One reason for this, according to our investigations, is that their relations or friends do not know their where abouts sometimes due to the inability of the Welfare Section of the prisons to contact their families and in some cases because of the inability of inmates to provide the Welfare with correct contact information. But that is just for a small percentage. The larger percentage of inmates who have not been visited by anyone is because no one wants to have anything to do with them.

So, to help re-establish contact between prisoners/ex-prisoners and their families, friends and associates, we undertake family-tracing which has, in a very unique way, revealed to us the degree of discrimination suffered by prisoners and ex-prisoners. In fact, I have come to believe that the root problem of criminal justice and prison reforms in my country, for the avoidance of generalization, is discrimination against prisoners and ex-prisoners, and unless we tackle this head long, the reforms we fight for might not be achieved because very few people including those in authority care about prisoners and can support any program designed to improve prisons conditions. This is the attitude we encounter in our efforts to get financial aid for prison work in comparison to those who work for orphans, those living with disabilities and HIV/AIDS victims, among others. Some people I have approached for help have asked me why I am concerned about "those criminals" and not orphans, so that I will get more support. I am always quick to remind them that I am doing what God has called me to do and that many prisoners are orphans because they have no one to help them.

During theses family-tracing visits, many families and friends of prisoners have denied knowing the prisoner until we had to preach long sermons. Painfully, these discriminatory attitudes are extended to ex-prisoners who need support of their families, society and friends to begin a new life. We have many cases of ex-prisoners who were not allowed to re-enter their family house after they had been released from prison. I have a case of a minor and first offender, who was jailed for 3 years for stealing clothes from a neighbour. No one visited him even though all his family members lived within the same town where he served his jail term. As if that was not enough, he was rejected by his grandmother and father after he had been released from prison. So, he went back to the prison and they sent him to our office. It took a lot of time and energy to convince the family to accept him. This is one case among thousands across the country.

The consequences of discrimination on the prisoner and society are huge and devastating. Firstly, the prisoner or accused cannot access justice, since he or she is rejected by his/her family, friends, and employer and have no one to push his case. He or she is therefore, left at the mercy of the police, the courts and prison who unfortunately do not show him/her mercy. The largest number of pre-trial inmates which form 80% of prison population in most prisons, belongs to this category, leaving us with a huge prison budget, decayed prison infrastructures, and with a system that creates hardened criminals rather than reform them, to mention but a few.

Secondly, the ex-prisoner, who is discriminated against by everyone around him, including his/her very parents, brothers, sisters and employers of labour, finds him/herself alone, powerless and vulnerable in every way and is often tempted beyond resistance to re-offend and return to jail shortly after his/her release. This is one reason for the high levels of recidivism in our prisons and increasing crime rate and violence in our cities and towns, as the Convention affirms, "Reaffirming that discrimination between human beings ……is an obstacle to friendly and peaceful relations… and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same state"

Unfortunately, the police and the courts have no interest in the history of the offender, who is a victim of discrimination and who may have never committed the crime, if he/she had been shown love, care, given opportunities and treated justly by society. The only interest of the police and the courts who are already biased against him/her is to establish his/her guilt and send him/her to prison as a second or third offender under harsh jail conditions.

Thirdly, the ex- prisoner carries an undeletable tag of "ex-prisoner" without the family members, employers of labour and the general public giving any consideration to his/her present behaviour, and this hunts him/her for the rest of his/her life. He/she can hardly find a wife, husband or friend or a job simply because he/she had been a prisoner.

My point here is that we cannot achieve criminal justice and prison reforms in the areas of decongestion, fair trial, among others, if we do not tackle the problem of discrimination. In other words, unless the police, the prisons, society and the judicial officials see the accused or prisoner, first as a human being, created in the dignity and in the image of God, who is born free and equal in dignity and rights, and is treated as such, we may not achieve the purpose of this historic gathering – to provide a blue print for criminal justice/prison reforms in the world and reaffirm the minimum standards for the treatment of prisoners.

To address this major challenge to prison and criminal justice reforms, CURE Nigeria is prepared, if supported, to launch a powerful, very effective and penetrating advocacy program to fight discrimination against prisoners and ex-prisoners, and to expose structures that hold our people captive and those behind the structures. This will undoubtedly lead to criminal justice and prison reform in Nigeria and Africa at large.

This is our commitment. We solicit your financial, logistical and moral support and I urge CURE chapters to take similar or same measures to address discrimination against prisoners and ex-prisoners.

I would like to end this presentation with the word of encouragement: the task is challenging and sometimes difficult, but we must continue until we achieve the goals we have set down for ourselves, keeping in mind that the words of Martin Luther King, " the greatest evil is not the evil deeds of bad people, but the silence of good people. We cannot remain silent in the midst of so much injustice against the poor.

Thank you all, and God bless you!

Article 4: States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred or discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

International Convention of the Elimination of All Forms of Racial Discrimination
Entry into Force January 1969

Convention on Protection of Rights of Migrant Workers

Bruno Van Der Maat Associate Professor at the Univesidad Católica de Santa María – Arequipa Peru

President Observatorio de Prisiones - Arequipa Peru

Let me state first of all state that in Peru -.apart from some expatriates working for foreign companies -we practically do not have many migrant workers. And, as you can easily imagine, expatriates working for multinational companies are not very likely to end up in prison. We rather have Peruvian expatriates in other countries. The number of Peruvians living abroad (legally or illegally) represents more than 7 % of the total population of the country. Regarding foreigners in Peruvian prisons, according to the list published by the Center for Prison Studies of King's College – London, Peru ranks 107th (out of a total of 164 countries)[1] far behind Chile, Argentina, Belice, Brazil or Venezuela, but ahead of Mexico.

So in this panel I would rather tackle two related themes. I will speak of foreigners in our prisons and of Peruvian citizens in foreign prisons.

Foreigners In Peruvian Prisons.

The foreigners in our prison system represent 2.5 % of all inmates (1165 out of 44.889 to be exact[2]). I could not get the list of countries they represent, but according to newspapers I consulted, the largest group would be Spaniards, followed by Columbians, Bolivians, Mexicans and Dutch inmates. Most of them are in a particularly vulnerable position, because they are not migrants or foreign workers, but mostly people who came to Peru as tourists and got caught with drugs they intended to smuggle out of the country. Most of them have been arrested at Lima international airport, while a minority has been arrested on other border crossings. Most of them have been contacted in Peru by drug traffickers who promise them sums going roughly from 2000 to 5000 US$ to get a certain quantity of drugs out of the country. Many people are seduced by the easy money, but have no idea of the risks. There are mandatory penalties imposed in case of drug trafficking which can rise up to 10 or 15 years without parole. Many women are caught this way.

Many foreigners do not know they are planned to be caught, because their traffic is leaked to customs or police officers to get them arrested, while the professional traffickers use this opportunity to get through.

Once arrested, these foreigners are imprisoned. Their process can take some time, especially if they do not have money to pay a good lawyer. Some of them do not even understand Spanish, which is a big difficulty during the process and later on in prison as well. Neither do most of them know the culture, which makes them particularly vulnerable in the prison system where many unwritten laws are to be respected. Getting in touch with their family is usually a complicated process, as there is no internet in prisons and public telephones are scarce and not very cheap.

Depending on their citizenship, they sometimes receive some help from their Embassy. Some Embassies regularly send their Consul with some money. Usually Embassies or Consulates do not intervene in the process, but keep an eye on the conditions of the prisoner and provide him with some pocket money and communication. However the other inmates quickly get to know the foreigner gets money, so they press him to share it with them (to put it nicely).

They have the right to write letters and receive them in their own language. But all letters must pass through clearing. This process can take some time or be complicated because most prison officers only speak or read Spanish. The foreign inmates usually learn some basic Spanish pretty quickly, in order to survive. I knew an Afrikaans speaking South African of about 60 years old who had a tough time in prison because of his lack of knowledge of Spanish. He finally got out thanks to his family and the South African Embassy.

Not having a permanent address in Peru or someone willing to help them with lodging, these foreigners usually cannot get out on parole, because in order to get out they need a home certificate with a Peruvian address. This also means they cannot get out to work to pay for the reparation (apart from other costs related to their living in prison as soap, tooth paste, toilet paper, cleaning products, paper, cigarettes, etc.), and they cannot get free as long as they do not pay their reparation. And if they get out early, on parole, they cannot officially work because they do not have a work visa.

Last year on December 12th the Peruvian Congress voted a law which would make it easier for foreign inmates to be transferred to a facility in their country of origin. This law even states that in some cases (which still have to be specified) foreigners would not be required to pay for the reparation. This new law still needs to be regulated, but it would mean a serious step towards the solution of many problems foreign inmates confront in prison.

Peruvians in Foreign Prisons.

The second theme in this panel is the presence of Peruvian citizens in foreign prisons. Here we have to distinguish between migrant workers and drug traffickers. Drug traffickers in foreign prisons are sometimes presented in the local press, especially when they are caught in Asian countries where they could get capital punishment. But Peruvian migrants also get caught for other crimes than drug related offences or felonies. Usually they have to work it out by themselves. The Peruvian consulates normally do not intervene directly in the process, but sometimes offer some help to the Peruvian inmates in the foreign prison. The same rules apply as the ones we saw for foreign citizens in Peruvian prisons. When they are migrant workers they usually know the language and culture, while when they are just tourists caught with drugs, they have the same problems as their foreign counterparts in Peru.

Footnotes:

[1] See www.prisonstudies.org

[2] See www.inpe.gob.pe for the total prison population and www.andina.com for the new la won foreign inmates.

Article 16 #7: When a migrant worker or member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:

(a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;

(b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
Adopted 1990
Not in force

Convention on

the Elimination of all Forms of Racial Discrimination

Bruno Van Der Maat, Associate Professor at the Univesidad Católica de Santa María - Arequipa Peru

President Observatorio de Prisiones – Arequipa Peru

Racism in Peru and in Its Prisons.

Racism is not only a problem in prison in Peru but also in everyday life. You may have heard of the problems the indigenous peoples of the Amazonian jungle have had these last few months. In a general strike and subsequent uprising many have been shot or wounded by police assaults. Many policemen have also been killed in these fights. The whole situation is just an example of how racism permeates the whole Peruvian society. As the people who got on strike "were just Indians", the central government and the National Congress just did not bother.

People who are not of white descent are more likely to end up in prison, not only because they are not white, but mainly because they are poor. The link between race and economic situation is direct. Once arrested, non white people are more likely to lack adequate legal defense or to have difficulty to express themselves in Spanish or in the appropriate judicial language. Many courts do not even have State sponsored defense lawyers (although the law states they must be there).

Usually a judge will be harsher with non whites than with whites, amongst others because non whites are normally poorer and so cannot give the same kind of guarantees a richer white can propose. So discrimination works in two ways: because of race (culture, language, etc.) and because of poverty.

In these conditions it is easy to understand that in prison one usually finds poor people with low levels of educational and of formal social integration. Within the prison it has to be said that there is also a form of racial abuse among the inmates themselves. The poorer and more vulnerable inmates are in worse conditions than the other ones who know how to defend themselves.

This is not the panel on women in prison, but I have to state that there are several forms of gender discrimination not only in Peruvian prisons but also in the Peruvian penal law. For example, men can ask for intimate relationship with their wife if they behave well and comply with a series of documents and administrative steps. Women do not have the same "benefit" (it is not a right). The National Ombudsman Office has been fighting for the same treatment between men and women in this matter for years. It is an uphill battle, but there is a silver lining. Although our aim is not only to get women to have the same benefit as men, but to get it stated that the right to intimacy is a basic human right and cannot just be a benefit.

Religious Rights.

The Law states that all prisoners must be free to profess their religion and be able to get religious assistance when needed. Usually this assistance is provided if the Church or religious organization complies with a number of administrative rules. These can be pretty absurd sometimes, as when we were asked to present the foundation chart of our Church signed by the founder and registered at the Public Registration Office. I explained it was pretty difficult to get Jesus to sign this paper by now, but anyway.

However there are two problems I would like to mention. One is that the director of the prison may him/herself be biased to give certain facilities to the ministers from his own religion, and make the entrance of other religions more

difficult. We even had the case of a regional prison director who herself went to the prisons to organize prayers with some "volunteers" of the prison personnel.

Another case which is more frequent is that the right of religious assistance is not considered as a right of the inmate but as a right of a certain church or religious groups. In that case the inmates are considered as potential church members, and they are harassed by the presence of these ministers. Many prison directors like to have lots of religious groups inside the prison who help to calm down the inmates with prayers, music, etc. That is why they may open the doors to them, even if there is not one member of that particular church in his prison. One has to remember that many prisoners may be in a very vulnerable psychological state, and that they can be an easy prey for these very enthusiastic and persuasive church ministers. It has to be stressed the right of religious freedom is a right of the prisoner, not of the church or religion.

Part I: General Provisions, Applying to Prisoners of War

Article 2: In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3: In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any similar criteria.

2) The wounded and sick shall be collected and cared for.

Articles 4-7 describe categories and rights of Prisoners of war.

Article 10: The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power desiginated by the Parties to a conflict.

Humanitarian Law
91. Geneva Convention relative to the Treatment of Prisoners of War
Adopted August 1949

A Letter

From International CURE to the United Nations

June 25, 2009

Dear Secretary-General Ban Ki-moon,

We, the participants representing 20 countries and 5 continents of the 4th International Conference on Human Rights and Prison Reform organized by International CURE met for 3 days from June 22nd through June 24th at the United Nations in Geneva, Switzerland.

During the conference, several salient human rights and prison reform topics and treaties were discussed and are the following:

(1) the issues of women and children in prison (2) the Optional Protocol on the UN Convention against Torture (OPCAT) (3) the Draft of Minimum Standards for Women (Thailand) (4) the Convention on the Rights of the Child (CRC) (5) the ill treatment of migrants in prison (6) the refusal of countries to comply with treaties and international norms that they have ratified and are bound by (7) the unacceptable delay in justice delivery (8) the immense mistreatment of pre-trial inmates (9) the abolition of the death penalty (10) the vast racial discrimination which exists throughout the world, as well as other forms of discrimination against prisoners.

After three days of discussion we determined that nothing justifies the incarceration of individuals accused of non-violent crimes either before or after sentencing. We also resolved that the following major issues must be addressed urgently by national regional and international governments:

1. Recognition of the fact that women have different needs; therefore, we support the implementation of the Draft of Minimum Standards of Women Prisoners (introduced by Thailand).

2. Any form of incarceration of children should be avoided at all costs. We also consider the sentencing of children to life without parole to be cruel and unusual punishment that no country should impose. We urge both the United States and Somalia to join the 193 countries that have ratified the United Nations Convention on the Rights of the Child (CRC) Treaty.

3. The human dignity of every individual must be upheld at all times as it is described in Human Rights documents, especially in regards to education, health care, preserving the family unit, religious beliefs and sexual preference.

4. Incarcerated individuals should retain the voting rights held by all other citizens within their country.

5. Overcrowding and solitary confinement within prisons should be considered as degrading and inhumane treatment under the Optional Protocol on the UN Convention against Torture (OPCAT) treaty.

6. Corrective action, as identified in the specific Convention or treaty, should be pursued with states that do not adhere to documents they have ratified.

7. Adequate resources should be allocated for the public defense of indigent citizens.

8. The diversity of indigenous and tribal populations should be considered in the criminal justice process and the decision to incarcerate.

9. Recognition that the incarcerated suffer serious mental and physical health problems should be adequately addressed and overseen by government health departments.

10.The responsibility for administration and management of the prison system belongs solely to the states and should not be delegated; therefore all prison privatization practices should be discontinued.

11. All countries must recognize that globalization has led to an extreme diversity of the prison populations. This diversity must be respected and all forms of racial discrimination outlawed.

12. Any and all forms of torture of those incarcerated are intolerable and must be abolished worldwide.

13. Existing and additional budgeting should be immediately allocated to develop alternatives to imprisonment that focus on rehabilitation and restorative justice.

14. All prison staff must be properly trained to implement human rights principles and alternative dispute resolution techniques.

As a recognized Advisory Group (NGO) to the United Nations, we respectfully request that each country carefully review and respond to our recommendations.

We also request that the above items be included among the priority topics established for discussion at the Twelfth United Nations Crime Congress to be held in Salvador, Brazil, in April 2010.

As we understand, the main theme of this Congress will be to compile and review standards and norms in crime prevention and criminal justice that have been developed over the past 50 years.

Respectfully,

Charles Sullivan
Executive Director
International CURE
PO Box 2310
Capitol Station
Washington, DC 20013
202-789-2126

Addendum

Report of Participation at the CURE International Conference held in Geneva Switzerland June 21 to 24

Carla Peterson–Executive Director, Virginia CURE, USA

Over 50 people attended this International CURE conference in Geneva from June 21 through June 24 There were 12 panels considering a number of UN Resolutions and conventions. On Day One, panelists examined the *Universal Declaration on Human Rights*, Covenants on Civil, Economic, Political, and Cultural Rights, and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. *The Optional Protocol to the Convention Against Torture (OPTCAT)* was also discussed including how well it is working in the many countries that have signed this protocol. The Untied States is one of the few countries that have not signed this. A reception was held after the sessions for the Subcommittee for the Prevention of Torture, (created for the implementation of OPTCAT) after the first day's sessions.

Day Two opened with my workshop on how to start a CURE chapter. Participants were able to share information as to their experiences in beginning a CURE chapter. It was inspirational to see the dedication and passion of these CURE leaders. The Africans, particularly, had great obstacles to their work, because the institutions that we take for granted in America were not present and much had to be done on a personal level. Nevertheless, we were all impressed to hear of the hard work that had been accomplished in starting these chapters, especially in Nigeria. The workshop continued with a discussion of how to run a chapter on Day Three. Virginia C.U.R.E. was presented as an example of a "mature" chapter that had been operating for over 20 years. This allowed another exchange of ideas as comparisons were made. This session involved a discussion concerning CURE as a service provider. CURE chapters in the States do not provide direct services. Sylvester Uhaa, the Nigerian leader asserted that, in the context of Nigeria, there was no choice. The needs were so great that if he can provide services, such as transitional housing, he will. This discussion spotlighted the differences CURE chapters experience working in different cultures.

Day Two panels concerned *The Convention on the Rights of the Child*, *The Conventions on Elimination of All Forms of Discrimination Against Women*, *The Convention on the Rights of Migrant Workers*, and *The International Convention on the Elimination of All Forms of Racial Discrimination*. All panelists focused on the application of these conventions to people in prison.

Day Three saw panels on the Second Protocol on the Death Penalty, other UN Instruments for Criminal Justice Reform, and a *Standard Minimum for the Treatment of Prisoners*.

The conference allowed participants to hear from many countries including Germany, England, Canada, the USA, Nepal, the Philippines, Zambia, Nigeria, France, Switzerland, Brazil, Uruguay, Peru, Niger, India, Ivory Coast and Kazhakstan. It was a privilege to have been able to attend this conference and to meet so many passionate and dedicated individuals and organizations working to reform criminal justice systems around the world.

Citizens for the Rehabilitation of Errants (CURE) International Meeting
Geneva, Switzerland

June 21-25, 2009

Brenda Murray

A combination of interest and curiosity prompted me to journey to Geneva in June, to attend International CURE's Fourth Conference on Human Rights and Prison Reform. Charlie Sullivan, Co-Director of CURE USA and Director of CURE International, arranged the three-day meeting for almost fifty people at the beautifully landscaped United Nations headquarters overlooking Lake Geneva, the site of the League of Nations in 1919. In typical CURE fashion, there were no lunches, no banquets, no cocktail receptions, and no registration fee.

A series of panels covered the impact the following documents could have on people in prison.

Monday, June 21

Panel – the Universal Declaration of Human Rights (1948);

The Universal Declaration of Human Rights was adopted unanimously in the U.N. General Assembly. The *Declaration's* basic value is that "All human beings are born free and equal in dignity and rights." Many of the *Declaration's* thirty articles deal with civil and political rights. Charlie Sullivan believes the right to vote for prisoners is the key to achieving prison reform. Only two states in the Unites States do not allow a person to vote after release from prison. Charlie mentioned a book on prisoner rights and managing prisons by Andrew Coyle, Professor of Prison Studies in the International Centre for Prison Studies, School of Law, Kings College, University of London.

Paula Osmok, Executive Director, John Howard Society of Ontario, Toronto, Canada, elicited a positive response with her comment that it is the voters who elect the politicians, not the politicians who should decide the voters. Canada's Charter of Rights and Freedoms, gives every Canadian citizen the right to vote. Denying people the right to vote damages the theory of a democratic society.

Father Tony J. Ranada said that prisoners in the Philippines do not exercise their right to vote. Father Jose de Jesus Filho, OMI, said that justice in Brazil is selective. The rich do not go to prison, torture in prisons is common place, and it is a cultural rather than a question of law. Father Filho is opposed to family visiting via video conferencing because it keeps prisoners isolated. Homosexual prisoners are segregated and allowed no visitors.

Panel – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESR) (1977)

Elsa Marie Knudsen, John Howard Society of Ontario, Toronto, Canada, recommended The Case Law of the U.N. Human Rights Commission, 1977-2008, Jakob Moller and Alfred E. Zayas.

Father Cornelius Chukwu C., Onitsha Province, reported that in Nigeria only people without God parents, political or otherwise, go to jail.

Panel – the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1988)

[CAT] requires governments to prohibit and punish torture in law and in practice. Governments must investigate whenever there are reasonable grounds to believe that an act of torture or cruel, inhuman or degrading treatment or punishment has been committed, and must bring those responsible to justice. Under the treaty, rape of a woman in custody by a correctional officer is considered to be torture.[1]

One speaker was Julio C. Guastavino Aguiar, Public Criminal Defender Prisons Commission, Uruguay Supreme Court of Justice.

Panel – Optional Protocol to the Convention Against Torture (OPCAT) One knowledgeable speaker was Mary Murphy, Policy Director, Penal Reform International, London, England, and the other's woman's first name was Marina.

The model for CAT is the European Commission Against Torture. The emphasis is the prevention of torture. Signatories to the CAT have to create an apparatus to carry out visits to places where torture could occur such as jails, prisons, mental hospitals and various other locations. Supposedly some states have not signed CAT because of the alleged cost. Twenty four out of forty-seven states have designated National Preventive Measures.

There is a U.N. Subcommittee for the Prevention of Torture (SPT). If a country is a signatory, the SPT can come into the country uninvited and perform an inspection. SPT reports from two countries are available: Sweden and the Mauritius. On the other hand, if a country is a signatory, then a U.N. Rapporteur must be invited into the country to perform an inspection. Many members of the U.N. Subcommittee for the Prevention of Torture attended a reception on Monday evening.

Charlie Sullivan believes that in the United States, New York and Pennsylvania allowed independent inspection of their detention facilities.

Tuesday, June 21

Panel – Convention on the Rights of a Child (CRC)

The United States has not ratified the CRC.

Bernard Boëton, Terre des hommes Foundation, Children Rights Department, Lausanne, Switzerland, referred to Articles 37 & 38 of the CRC. Mr. Boëton believes that the ill treatment of children by correctional officials is caused by ignorance, not perversity, and that hearing children requires specific techniques. In his experience, there is always at least one person with an open mind in each government department handling this subject, but the problem is public opinion.

According to Mr. Boëton, this is a difficult subject, and no country will admit that it has prisons for children. However, though they call them different things, the facilities and practices that exist are prisons because they deprive people of their liberty. Mr. Boëton thinks it is hopeless to try to change the views of the older generation on this subject. He said that in France public opinion has caused a reduction in the age of juveniles from 15 to 13. This subject requires that politicians be courageous to do what has shown to be effective and not what the public sometimes demands. He compared positive actions in the area of juvenile justice to snowflakes. One snowflake does not make a difference, but a lot of snowflakes can cause a branch to move in the direction to which the snowflakes are pushing.

Violence and sex abuse within a prison can occur between children and by staff to children.

Mr. Boëton said that juvenile justice has been called "minor" justice and that it is not considered prestigious to be a judge or magistrate who handles juvenile matters. Mr. Boëton believes Penal Reform International's website contains excellent information. He thinks that pre-trial detention facilities are schools for crime and children should be place in pre-trial detention only in exceptional circumstances. To Mr. Boëton's knowledge, no one has studied the cost of alternatives for juveniles such as probation or community service versus the cost of incarceration. A violation causes a breach in social relations and the purpose of the sanction is to reestablish social harmony. In the juvenile justice system, a judge can review a sentence at any time.

Mr. Boëton mentioned the International Organization of Juvenile Justice (www://juvenilejusticepanel.org) and the first World Congress on Restorative Justice, November 4 – 7, 2010, in Lima, Peru.

Anita D. Conlon, Pennsylvania State Coordinator, National Coalition for Fair Sentencing of Children, USA, said that Somalia and the U.S. had not ratified the CRC. She said that the U.S. was the only country where children, persons less than eighteen years of age, served life sentences without the possibility of parole. The state of Pennsylvania has twenty percent of the people with this sentence because Pennsylvania has no minimum age for commission of a crime,

and it has mandatory sentencing through adult courts, and the death penalty or life without parole are the mandatory sentences for first and second degree murder. The U.S. Supreme Court struck down the death penalty for juveniles and converted their sentences to life without parole in Roper v. Simmons, 543 U.S. 551 (2005).

Panel – Convention on the Elimination of all Forms of Discrimination Against Women (CEDOR) (1979) and its Relation to Women Incarcerated

Rachel Brett, Representative (Human Rights & Refugees), Quaker U.N. Office, Geneva, Switzerland, said that treatment of women should be guided by the principle that people who are different should be treated differently. She said that the U.N. standards for the treatment of prisoners were good, but they were written for males and not for females and they are old. The U.N. Development Fund for Women (UNIFEM), is the women's fund at the U.N. and the force behind the **"Enhancing Life** for **Female Inmates**" (ELFI) project and that a publication was available on the Internet.

The U.N. Office on Drugs and Crime is working with Thailand on drafting supplementary standards for the treatment of prisoners, or relevant commentary. A meeting of government representatives will be held this fall in Bangkok and the rules will be adopted using the U.N.'s "Vienna Process." I believe Ms. Brett will be attending the Bangkok meeting, and she invited anyone with comments to send them to her. She gave me a copy of "Draft U.N. Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders," (Rules) and a copy of "Commentary to the Draft " (Rules).

Mary Michael Nolan, Sisters of the Holy Cross, Criminal Lawyer and Vice President of Instituto Terra, Trabalho E Cidadania (ITTC), a non-governmental organization that: (1) works directly with women prisoners in Brazil by, among other things, offering courses in prison on violence, gender, and citizenship, (2) supports formation of professional people like student lawyers, and (3) works to change public policies. Sister Mary Michael believes that society can bring about change in prison conditions, and that every prison should have a community council, so that outsiders can inspect prisons.

Sister Mary Michael believes that women in prison are not on anyone's agenda. Neither criminologists nor feminists talk about women in prison. Brazil does not ask a woman's ethnicity or whether she has children. In Brazil, new mothers can keep their children with them for six months and, in theory, the prisons should have a day care facility for children up to seven years of age. Sister Mary Michael gave statistics on the number of women in prison in San Paulo and in Brazil. My notes claim a total of 4,000 women incarcerated in Brazil, and 2,800 of these women are in San Paulo. The San Paulo women include 483 women from fifty-three different countries. The number of incarcerated women from outside Brazil is high because San Paulo is on a route used to transport drugs. Sister Mary Michael believes that Latin America and the United States suffer because they follow the English criminology example where the State always seeks to impose the severest sentence.

Kim Pate is Executive Director, Canadian Association of Elizabeth Fry Societies, a federation of autonomous societies that work on behalf of women involved with the justice system, <wwwElizabethfry.Canada> Women and minorities make up a disproportionately large part of the incarcerated population in Canada. The Canadian Human Rights Commission has criticized the treatment of incarcerated women and found the prison system inadequate. Nonetheless, economic conditions have caused a backlash against incarcerated women and the present government is adopting more restrictive measures.

In 1994, Debbie Kilroy founded Sisters Inside Inc., a community-based organization in Australia that advocates for the human rights of women in the criminal justice system. Ms. Kilroy was first incarcerated at age thirteen, and at age twenty-seven she was convicted of drug trafficking. She earned her Bachelor of Science degree while in prison and earned a law degree on her release.

Sisters Inside Inc. began to respond to the request of women who wanted therapy for sexual assaults. It now presents courses on that topic as well as parenting, drugs, addiction counseling, etc. In addition, the organization engages in advocacy and its website contains a manual for managing women in prison. Sisters Inside Inc. cannot file a complaint alleging a violation of the OPCAT because Australia did not sign the optional protocol. Three to four hundred women

attend the international conferences organized by Sisters Inside Inc. The next conference, "Is Prison Obsolete?," will be held in Brisbane, Australia, September 2-4, 2009.

Panel – International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (2003)

This is the latest convention and it applies to people in a country with legal and illegal status. In the U.S., one third of federal prisoners are from countries other than the U.S.

According to Sister Mary Michael, one-fourth of prisoners in Brazil are foreigners. By the terms of the *Vienna Convention Article 36* a foreign national who is arrested has the right to contact the consulate of his/her country. Sally Babcock Clinical Director, Center for International Human Rights, Northwestern Law Schools, pointed to a U.S. Supreme Court decision (possibly US 552, 2008) that held a decision of the International Court of Justice finding a violation of the *Vienna Convention Article 36* with respect to forty-three Mexican nationals in the U.S. is not enforceable.

Sister Mary Michael said that two-thirds of the incarcerated women in San Paulo are single parents and the most important thing to them is contact with their children.

In Chile, prisoners pay Social Security just like private workers.

Bruno Van der Maat is an Associate Professor at the Univesidad Catolica de Santa Maria, and President Observatorio de Prisones, Arequipa, Peru. He said that in Peru, a conviction of drug use is a death sentence. The country has a network of pastoral care.

Professor der Mat reported that in Peru, the penal judges appose privatization of the prisons on the principle that justice is a community issue.

Indir Ranamagar, Chair of Prisoners Assistance, Nepal (PANepal), lives with one hundred children in Katmandu. She has been active for nineteen years establishing a residential home for children, a school, a home for boys, a day care center, doing advocacy, etc. Ms. Ranamagar said that Nepal has good laws but they are not enforced and the women are treated worse than the men.

Panel – OPCAT – Discussion on Signing, Ratification, and Implementation.

This presentation by Mary Murphy, Policy Director, Penal Reform International, London, England and Martha Miravete Cicero, Group de Mujeres de la Argentina, was excellent.

Panels not reported on:

Panel – Second Optional Protocol of the Covenant on Civil and Political Rights on the Abolition of the Death Penalty;

Panel – International Convention on the Elimination of all Forms of Racial Discrimination in Regard to People in Prison (emphasis on religious discrimination);

Panel – Standard Minimum Rules for the Treatment of Prisoners; and

Panel – DVD on Human Rights & Need for Prison Reform in the World with a Comprehensive Focus on Africa, and Report on Plans for U.N. Crime Commission Meeting in Brazil in April, 2010.

Notes respectfully submitted, Brenda P. Murray, July 19, 2009

(Footnotes)

[1] United States of America, Rights for All, "Not Part of My Sentence" Violations of the Human Rights of Women in Custody, 8 (Amnesty International's Campaign on the United States 1999).

The International CURE network for criminal justice reform now includes 91 countries:

Algeria Angola Antigua Argentina Australia Austria
Bangladesh Belize Benin Bessau Guinea Bolivia Brazil Burkina Faso
Cambodia Cameroon Canada Chad Chile Colombia
Congo Costa Rica Cote d' Ivoire Dem. Rep. Congo Denmark Dominican Republic
Egypt Ethiopia Fr West Indies France Gambia Georgia Germany
Ghana Greece Guatemala Guinea Guinea Equatoriale Haiti
Honduras Hong Kong India Ireland Italy Japan Jordan
Kazakhstan Kenya Kyrgyzstan Liberia Lybia Malawi
Mali Mauritania Mexico Morocco Mozambique Namibia Nepal
Netherlands New Zealand Niger Nigeria Norway Pakistan
Panama Paraguay Peru Philippines Portugal Romania Russia
Rwanda San Salvador Senegal Sierra Leone Slovenia South Africa
Spain Sri Lanka Switzerland Taiwan Tanzania Togo Tunisia
Uganda UK Uruguay USA Venezuela West Africa Zambia

4th International Conference, Human Rights & Prison Reform, June 21-24, 2009, Geneva, Switzerland