

SOCHUM



STUDY GUIDE

Ethics of Detention: Safeguarding Human Rights in Detention Facilities

The Social, Humanitarian, and Cultural Committee (SOCHUM) focuses on a wide range of social and human rights issues, promoting and guarding the safety of all individualities. It addresses critical social challenges, including poverty and discrimination, with a particular emphasis on securing vulnerable populations like women, children, and refugees. In the context of "Ethics of Detention: Safeguarding Human Rights in Detention Facilities," SOCHUM emphasizes the need for access to legal representation, and responsibility, aiming to uphold human rights norms and produce a more just and humane system for all detainees. It also reviews transnational human rights instruments to insure compliance among member states and fosters global cooperation to partake best practices for humane treatment in detention. The commission investigates human rights violations, advocates for reforms, and promotes consciousness about ethical norms in detention practices.



INTRODUCTION

The Ethics of Detention put emphasis on ensuring that the rights of all individuals are protected in captivity. In situations where an individual is deprived of liberty, the UN establishes an obligation towards detainees to prevent unethical practices. Ensuring that these standards are upheld is significant in safeguarding both the security of a state and the human rights of an individual.

Detention is categorized into 3 main types:

1. Criminal Detention: Individuals are detained under the criminal justice process. This includes both Pre-trial detention, when individuals are not yet convicted of a crime but have been arrested, as well as post-conviction detention when an individual is found to be guilty of a crime. This form of detention must be backed by authentic legal grounds and allows the detainee the right to legal representation.
2. Administrative Detention: Individuals are detained on the basis of administrative reasons such as national security or protecting the public's safety. The legal process is usually not followed and no criminal charges are pressed.
3. Immigration Detention: Individuals are detained due to their immigration status being unclear. This occurs through immigration control when people who are asylum seekers, awaiting visa clearance or need to be deported are detained. Immigration laws are enforced through this detention as it is also used for administrative purposes.



There are several frameworks within the UN that establish guidelines and set the global obligation of states to protect the human rights of individuals in detention:

The Universal Declaration of Human Rights lays down the basic rights of individuals in captivity. Article 9 states, “*no one shall be subjected to arbitrary arrest, detention or exile,*” alongside article 5 emphasizing that “*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*”.

The International Covenant on Civil and Political Rights (ICCPR) also contains articles pertaining to the rights of detainees. Article 9 and 10 expand on this, as quoted below:

“No one shall be subjected to arbitrary arrest or detention....Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court...Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation....All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person....The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) also worked towards developing a framework for promoting ethical detention practices. It also lays down basic principles referring to ensuring discrimination of prisoners as well as their rights as detainees.



These rules outline the prison conditions, treatment of prisoners and suitable disciplinary measures that are in line with human rights. The first rule states, *“All prisoners shall be treated with respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.”*

Many Regional human rights treaties such the **European Convention on Human Rights** and the **American Convention on Human Rights** also exist for specific frameworks. **The Bangkok rules** explore the rights of women as prisoners and the **Beijing rules** lay down ideas pertaining to the administration of juvenile justice.

Ethics of detention are a crucial aspect in ensuring that global standards are maintained in line with human rights. It acts as a great aid to promoting international justice and security. Ensuring that detainees are treated with respect and societal values are maintained helps in developing trust and strength within the legal system. Ensuring that every individual is given a right to trial and legal recourse, aids in preventing arbitrary detention. Ethical detention also helps control accountability mechanisms that exist to keep states in line with proper standards. Bodies such as the UN can monitor and reform practices in facilities. Providing individuals that are imprisoned with rehabilitation and resources to improve helps foster growth and support in society while reducing recidivism.



CONDITIONS OF DETENTION

118/194 jurisdictions for which data had been collected by the World Prison Brief of the International Centre for Prison Studies had a rate of prison occupancy above 100 percent. Out of these, 15 jurisdictions had rates of overcrowding above 200 percent and 33 had rates between 150 and 200 per cent.

Overcrowding is one of the biggest problems faced by detainees, especially in developing countries. Overcrowding is when a prison holds people beyond its spatial capacity. This causes a lack of personal space and privacy, as well as extremely unhygienic conditions when too many prisoners are forced to share the same cells – not only is it a lot harder for authorities to maintain decorum in prison, but also, rivalries and competitions start to form; over things as trivial as food, cutleries, mattresses, bathroom rounds etc.

For example, the Brazilian prison riot in 2019 occurred primarily due to overcrowding of the prison. According to BBC News, *“A crackdown on violent and drug-related offenses in recent years has seen Brazil's prison population soar since the turn of the century. The prison in Roraima state where 33 inmates were killed on 6 January held 1,400 inmates when a deadly riot started. That is double its capacity.”*

A sociologist at the Federal University of ABC in Sao Paulo reported that prisons in Sao Paulo face this very problem very intensely. The ratio of guard to inmate is 1:300 or at times even 1:400: that is, 400 inmates for 1 guard to oversee. This overcrowding makes it extremely easy for gangs formed amongst the prisoners to uprising, and wreak havoc in the prison, putting the safety of both prisoners and guards at compromise.



TREATMENT OF VUNERABLE POPULATIONS

Even outside of prisons, the needs of women and minorities are catered to very carelessly, if at all. Within detention facilities, the matter is even worse. Women are frequently forced to undergo sexual harassment and assault; sometimes even with the prison guards involved. Separation is uncommon between men and women, which allows for this problem to rise in the first place. Not only do they have to undergo harassment but they are also denied gender specific healthcare, with their health often declining for this very reason. pregnant women in detention are denied prenatal care, increasing risks to both the mother and her child; inflicting mental and physical trauma. They are barely given proper hygiene products, and their personal needs are often overlooked.

Minorities, both religious and racial, also face discrimination and abuse in prisons. For example the detainment of Uighur muslims in China's 're-education camps', people are subjected to abuse, torture, and often forced to renounce their religion. Religious minorities are also not provided with their religious needs: they are denied access to their holy books, scriptures, temples, mosques, or even their dietary accommodations.

Ethnic minorities are also abused by prison staff and fellow inmates. There have been reports from **Myanmar**, where ethnic Rohingya detainees are held in appalling conditions. The prisons are overcrowded, they are forced to do labor, and suffer from a lack of medical care; facing torture and humiliation simply for their ethnicity



The ICRC (International Committee of the Red Cross) recommends the following specifications as the minimum space needed for a prisoner to sleep undisturbed, store personal property and move around:

- 1.6 sqm for sleeping space but do not include space for toilets and showers;
- 5.4 sqm per person in single cell accommodation;
- 3.4 sqm per person in shared or dormitory accommodation, including where bunk-beds are used.

ACCESS TO LEGAL AND JUSTICE PROTECTIONS

The right to a fair trial and due process is an aspect of multiple UN frameworks such as the **UDHR** where article 10 states, “*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*” This acts as an international human right and allows individuals freedom to utilize the legal system. It contains the right to tribunals, hearings and the presumption that an individual is innocent unless proven otherwise. The rule of law in any state remains constant and applicable to all citizens without discrimination. Wrongfully and unlawfully detaining an individual goes against the basis of the legal system as well as the fundamental human rights of an individual.

Alongside equitable and fair treatment in trial, it was very pertinent for detained individuals to have access to legal representation and counsel to be able to safeguard them from arbitrary detention as well as ensure transparency in protecting them.



The presence of legal counsel for advice plays a critical role in enabling a fair trial and allowing detainees to navigate complex legal procedures with ease. A large number of detainees have to face language and cultural barriers due to which they may have difficulty finding efficient legal counsel. In poverty stricken regions or areas experiencing conflict, there is a lack of legal resources and awareness about judicial rights. Poor economic conditions as well as discrimination can also cause hurdles for detainees to access legal representation. Restrictions also exist within detention facilities such as prisons where there are limitations such as administrative pressure, lack of price and lack of access to communication devices.

There exist many alternatives to detention that act as substitute measures to hold individuals in custody while a legal process is undertaken. They allow for better treatment of detainees, ensuring their human rights are protected and ethical guidelines are regulated.

The most commonly used alternative is bail which allows the release of an individual temporarily, usually in return for monetary compensation. Bail, however, can be expensive and not feasible for individuals suffering from poor socioeconomic conditions. Another alternative used is probation or release with supervision under which detainees are released with certain conditions such as surveillance, rehabilitation programs, meetings, drug testing, etc. This benefits society by progressing towards rehabilitation but supervision of this release can consume resources and may eventually lead to detention if conditions are not met. House arrest or electronic monitoring is also increasingly being used to supervise law enforcement. It allows individuals to remain confined to their homes while they await legal proceedings or are restricted as a punishment. This alternative is suitable for earning individuals as they are able to stay within a designated region and earn an income.



It ensures the safety of the public as well as supervision of the detainee while reducing the economic burden on detention facilities. Community service is another sustainable example of an alternative to detention allowing individuals a way to perform community service as a way of compensation and giving back to the society. It offers a way of rehabilitation and society reintegration for prisoners while also bringing about an improvement within the community.

Arbitrary Detention refers to when individuals are detained under insufficient legal basis or the state of detention is violating human rights. The UN describes this type of detention as *“Arbitrariness is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.”*

It includes prolonged detention, detention made on discriminatory grounds as well as detention without a fair and due process. It violates the **UDHR** as well as article 9 of the **ICCPR** which explicitly prohibits arbitrary detention alongside arrest.

Many legal instruments provide protection against arbitrary detention such as the rights laid down in UN mandates. Article 9 of the UDHR and article 11 of the Convention Against Torture (CAT) point to mandates preventing any unethical treatment of detainees and arbitrary arrest. The United Nations Working Group on Arbitrary Detention (WGAD) also allows complaints to be received which can then cause investigation and inquiries into cases where arrest or detention is arbitrary. Human Rights Courts and bodies such as the International Court of Justice (ICJ) exercise their power as platforms enabling cases of unjust arrest to be brought forward and An individual under threat of this detention can also utilize legal safeguards such as the right to a fair trial, due process and access to legal representation.



They also carry a right to be informed about the reasoning behind their arrest and can be made aware of the charges against them. **Habeas Corpus** is a legal principle that can be used to challenge the legal basis of an individual's arrest and detention in court. Through this investigation, accountability can be held and arbitrary detention can be avoided. Many organizations also play pivotal roles in protecting individuals from unjust detention. Examples include Amnesty International, the Human Rights watch and multiple NGOs.

DETENTION OF MIGRANTS AND REFUGEES

This refers to the detention of individuals who are seeking asylum, under immigration laws or migrating. Several international frameworks shed light on the rights of migrants and refugees in detention. **The United Nations High Commissioner for Refugees (UNHCR)** seeks alternatives to detention and prohibits the use of such extreme measures with respect to children. The **1951 Refugee convention** bans putting refugees under arbitrary detention. It allows individuals to seek asylum without the threat of detention. It emphasizes on the principle of non-refoulement preventing individuals to be sent back to countries where there is an imminent threat to their lives. The **UNHRC** advocates for the rights of asylum seekers, stating that they should not be detained solely for seeking asylum.



DETENTION OF CHILDREN AND JUVENILE JUSTICE

Keeping children and underage individuals in detention facilities raises many ethical concerns especially as they are a vulnerable group.

International law provides alternatives to detention for children such as rehabilitation and aims to minimize the length of punishment for juveniles.

The **Havana Rules (UN Rules for the Protection of Juveniles Deprived of Their Liberty)** establish a basic standard for the treatment of children in detention. It stresses the need to consider detention only as a last resort and provide adequate facilities for juveniles. The **Beijing Rules (UN Standard Minimum Rules for the Administration of Juvenile Justice)** follow similar principles and state, “*endeavor to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behavior, will foster a process of personal development and education*”. Furthermore, Article 37 of the **Convention on the Rights of the Child (CRC)** explicitly prohibits the arbitrary detention of detention, calls for the separation of juveniles from adult offenders and ensures that they are provided legal guidance.

The juvenile justice system is built on the key principles of promoting rehabilitation and reintegration of children into society. Alternatives to detention are also utilized such as diversion and rehabilitation which provide counseling and supervision of juveniles. Ensuring the ethical treatment of children in detention plays a pivotal role in protecting their rights as humans. Detention can cause great psychological harm to children inducing trauma and disorders such as anxiety.



Juveniles are rarely given access to professional legal guidance which deprives them from the ability to undergo a fair trial. Conditions under which children are detained are highly inadequate and individuals may face neglect or violence. Resources for juveniles are also limited, lacking facilities like education, healthcare and rehabilitation programs.

DETENTION IN CONFLICT ZONES AND OCCUPIED TERRITORIES

In regions where there is active conflict and a threat to the lives of people, fair law enforcement faces many barriers due to issues such as arbitrary detention, lack of due process, illegal arrests, torture and lack of a fair trial. The **Geneva Convention**, as underlined by its 4th article, extends protection to all individuals during conflicts. Arbitrary detention is prohibited and emphasis is laid on the human treatment of prisoners of war in detention. International law such as the **ICCPR** and **CAT** also further lay down a framework for the treatment of prisoners as outlined previously.

In conflict zones, there is a lack of accountability and transparency as an environment of impunity is created where human rights are easily overlooked. While organizations such as the Human Rights watch actively work to assess the extent to which ethics are being followed in detention centers, it is difficult due to life endangering conditions as well as resistance from governments. Detainees are usually not given access to legal representation especially in conflict zones either as a result of lack of legal resources or ignorance from the authorities. Human rights violations are a major concern in areas of conflict and occupied territories. Many facilities and detention centers are also kept secret to carry out illegal operations and avoid scrutiny.



Detainees in such regions are regularly subjected to torture, cruel and degrading treatment alongside sexual assault and verbal abuse. Discrimination and prejudice by both authorities and inmates also causes mistreatment of individuals in detention. Authorities in conflict zones use methods such as arbitrary detention to detain individuals for long periods of time without legal jurisdiction. In occupied territories, the responsibility for fair treatment and ethical detention lies on the territory occupying the land. An increasing misuse of detention powers is the arrest of political prisoners by the government under false pretenses. Authorities also use administrative detention to hold individuals and usually do not allow them to access legal representation.

KEYSTAKEHOLDERS

Libya: Libya has been in a negative light for its detention practices, particularly regarding the treatment of migrants and refugees. Numerous reports show abuse, overcrowding, and inadequate access to basic necessities in detention centers. The United Nations Support Mission in Libya (UNSMIL) has documented severe human rights violations, including torture and sexual violence, both in state-run and non-state facilities. According to a 2020 report from the International Organization for Migration (IOM), more than 600,000 migrants were trapped in Libya, many facing dire conditions in detention centers lacking food, water, and healthcare.

Kosovo: Kosovo, a country that previously suffered with this problem, has made significant progress in reforming its detention facilities. It has recently been focusing on rehabilitation and reintegration of offenders, and at the same time addressing the mistreatment of minority populations in their detention facilities.



The Kosovo Correctional Service has implemented various programs to improve living conditions in prisons. According to the Kosovo Agency of Statistics, the prison population has declined by 15% over the past five years; majorly thanks to reforms in sentencing laws.

Syria: Syria's detention practices have drawn condemnation from around the globe: especially when the ongoing civil war is taken into account. The Syrian government has been accused of baseless detention, torture, and killings of innocents. Human Rights Watch reported that detainees in Syrian prisons often endure inhumane conditions, with limited access to food and healthcare. The Syrian Network for Human Rights estimates that around 14,000 individuals have died from torture in custody between 2011 and 2021, showing clearly the extent of human rights abuses in the country's detention facilities.

Norway: Norway is one of the few countries which are recognized for their progressive approach to detention. Norway prioritizes rehabilitation over punishment. It has high standards for prison conditions and the treatment of inmates. Its prison facilities, like Halden Prison, focus largely on education, rehabilitation, and humane treatment. Cells are often referred to as “rooms,” and they come equipped with basic amenities like a private bathroom, a desk, and sometimes even a TV. Medical care is provided by the same health system as for the general public, making sure that prisoners receive the same standard of care as ordinary citizens.

New Zealand: the government of new zealand also prioritizes the humane treatment of detainees. The Department of Corrections has emphasized rehabilitation and reintegration of prisoners, and a lot of its prisons offer cultural and educational programs (particularly for Māori inmates).



The New Zealand Crime and Justice Survey indicates a notable decline in prison overcrowding, with a 10% reduction in the prison population over the last five years due to reforms aimed at addressing underlying social issues.

Canada: Canada upholds a robust legal framework governing detention practices, emphasizing accountability for human rights violations in correctional settings. The Correctional Investigator of Canada plays a crucial role in investigating complaints and monitoring conditions in federal institutions to ensure compliance with human rights standards. In 2022, the Office of the Correctional Investigator reported over 1,193 investigations into potential wrongdoing in federal prisons, reflecting a proactive approach to addressing human rights concerns.

USA: The United States has faced a lot of scrutiny over its detention practices, especially with respect to immigrant detention, as well as bad conditions in federal prisons. The American Civil Liberties Union (ACLU) has recorded abuses in immigration detention centers, in which detainees often lack necessary medical care and face overcrowded conditions. A 2021 report revealed that over 25% of detainees in U.S. immigration facilities experienced conditions that violated their basic human rights, highlighting ongoing challenges in the detention system.

Russia: Russia's treatment of detainees has drawn criticism, particularly concerning political cases. Reports from the Memorial Human Rights Center indicate numerous instances of torture and abuse in Russian prisons, particularly toward political dissidents. Human Rights Watch states that as many as 25% of prisoners report experiencing abuse while in custody, raising concerns about the treatment of individuals detained for their beliefs or opposition to the government.



China: China's detention practices have also raised a lot of concern, particularly in regions like Xinjiang. Here, mass detentions of Uighurs and other minorities have been reported to happen. These individuals (held in so-called re-education camps) face indoctrination, forced labor, and abuse. Estimates suggest that over 1 million Uighurs are currently detained in these facilities.

United Kingdom: According to the UK Home Office, over 25% of detainees in immigration centers have reported feeling unsafe, raising alarms about the treatment of individuals in detention and the need for systemic reforms. Conditions in immigration detention centers and the treatment of vulnerable populations are under international scrutiny. Reports from the Prison Inspectorate often highlight issues such as overcrowding and inadequate healthcare in UK prisons.

France: The French Republic has faced criticism regarding its treatment of detainees, especially concerning overcrowding and the treatment of migrants and asylum seekers in detention centers. Organizations like Amnesty International have documented poor conditions and lack of access to healthcare in these facilities. The French Ministry of Justice reported in 2021 that the prison population exceeded capacity by 115%, which is a cause for severe alarm.

INTERNATIONAL COOPERATION AND STANDARDS

UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules):

The Nelson Mandela rules (revised standard minimum rules) of 2015 call for the protection of the rights of prisoners.



They expand those adopted in 1995 by the first UN congress on the Prevention of Crime and the Treatment of Offenders. These revised rules clarify that minimum standards don't only require multilayer consideration of the detained individual but also an in-depth consideration of the employed in any form; This comes in relation to the treatment of those deprived of their liberty. The main idea that revolved in the Mandela rules is that human dignity must be the center of all principles. The document reiterates the prohibition of torture and cruelty which is the key to protecting basic human dignity. The three main aspects these rules portray are: Basic living conditions, medical services and Respect for Human Dignity. These aspects aim to ensure that prisoners are treated humanely and with respect.

European Prison Rules:

The European Prison Rules, by the Council of Europe, provide extensive guidelines for the humane treatment and management of prisoners across member states. They emphasize the protection of human rights from admission to release, ensuring prisoners are treated with dignity and respect. The rules cover various aspects, including living conditions, healthcare, discipline, and rehabilitation, aiming to create a safe and supportive environment that promotes the reintegration of prisoners into society.

ROLE OF INTERNATIONAL ORGANISATIONS

United Nations:

The UN, through various bodies like the **Human Rights Council** and the **Office of the High Commissioner for Human Rights (OHCHR)**, sets international standards for the treatment of detainees.



The UN's Standard Minimum Rules for the Treatment of Prisoners (also known as the Nelson Mandela Rules) provide guidelines to ensure humane conditions in detention. The UN also conducts inspections and reports on detention facilities to promote compliance with these standards.

International Committee on the Red Cross:

The ICRC focuses on the protection of detainees in conflict zones. It monitors detention conditions, ensures that detainees are treated humanely, and advocates for their rights under international humanitarian law. The ICRC also facilitates communication between detainees and their families and provides essential services like medical care and food.

Amnesty International:

Amnesty International opposes torture and unlawful detainment. Its primary goal is to advocate for the realization of all the human rights stated in the Universal Declaration of Human Rights and other international human rights treaties, for every individual. AI's initial focus was on prisoners of conscience, but it has since broadened to cover a variety of human rights concerns. It carries out investigations and disseminates studies on conditions of incarceration around the globe, including Syria, where it has uncovered multiple violations of human rights, including extrajudicial executions, torture, and enforced disappearances. Their reports demand responsibility for these war crimes and draw attention to the suffering of civilians caught up in the fighting. Amnesty also encourages governments to respect international human rights norms by lobbying them and supporting legal measures.



NATIONAL IMPLEMENTATION AND ACCOUNTABILITY

Best practices in detention management:

Effective detention management relies heavily on data-driven practices to ensure humane and efficient operations. In the United States, there are approximately 3,500 local jails and detention centers, holding around 740,000 individuals on any given day. Implementing best practices, such as the use of key performance indicators and regular data analysis, can significantly improve outcomes. For instance, facilities that adopt a data-informed approach can better evaluate the impact of policy changes and identify trends to plan for future needs. This approach not only enhances the safety and well-being of detainees but also ensures that resources are used efficiently.

Moreover, Reentry programs are another critical aspect of detention management. Research indicates that 44% of individuals released from state prisons are rearrested within the first year. Effective reentry programs that focus on housing, employment, and mental health support can significantly reduce recidivism rates. By addressing these critical needs, detention facilities can help former detainees reintegrate successfully, thereby enhancing public safety and reducing the overall burden on the criminal justice system.



DOMESTIC LAWS AND POLICIES GOVERNING DETENTION

Policies and frameworks for detention in facilities are often defined by national laws, which may differ in how well they protect detainees' rights. Countries like Norway have brought to action progressive laws, which help maintain humane conditions in prisons. As an example, Norway's prisons are designed to resemble normal living environments as much as possible. mental health services are also focused on, considering that many prisoners have psychological issues.

Unfortunately, nations with weaker legal systems often have outdated or abusive detention policies, as seen in cases of arbitrary detention in Myanmar and other third world countries. For example, laws such as the **1950 Emergency Provisions Act** and the **State Protection Act** give authorities the power to detain individuals indefinitely. The judiciary lacks independence, and so many detainees are denied access to legal representation. Because of this, security forces in the country can detain individuals without fear of accountability, severely violating international legal standards like those set out in the **International Covenant on Civil and Political Rights (ICCPR)**, to which Myanmar is not a party.

OVERSIGHT MECHANISMS (NATIONAL HUMAN RIGHTS INSTITUTIONS, PARLIAMENTARY COMMITTEES)

National human rights institutions, for example *South Africa's Human Rights Commission*, are tasked with investigating human rights abuses in detention.



Russia: Russia's *Federal Penitentiary Service* and related oversight bodies have been accused of turning a blind eye to abuses such as torture and inhumane conditions in penal colonies. The influence of political authorities discourages genuine investigations into the mistreatment of detainees, particularly political prisoners like Alexei Navalny.

INVESTIGATION AND PROSECUTION OF HUMAN RIGHTS ABUSES

In countries like Canada, independent bodies such as the *Correctional Investigator* look into human rights violations, which is a good way to ensure the enforcement of human rights within Canadian prisons. However, in states like Syria, systematic abuse in detention facilities often goes unpunished. According to Amnesty International, torture and extrajudicial killings in Syrian detention centers remain prevalent, with little to no justice for victims – majorly due to the absence of independent investigative bodies. The **Norwegian Parliamentary Ombudsman for Public Administration** oversees complaints related to prison conditions. it has the power to investigate allegations of abuse or inhumane treatment, and detention facilities are required to cooperate fully. Norway has also incorporated **National Preventive Mechanisms (NPM)** under the **Optional Protocol to the Convention against Torture (OPCAT)**, allowing for regular inspections of prisons and detention centers. these investigations help reduce violations of prisoner rights within these facilities.



REMEDIES AND REPARATIONS FOR VICTIMS

Victims of human rights abuses in detention have the right to seek remedies, including reparations. In some countries, such as the USA, victims can file lawsuits, as seen in the case of the notorious Abu Ghraib prison scandal, where Iraqi detainees were compensated for abuse by US forces. US President George Washington and other government officials tried to pass off the crimes that were committed at the prison as an exception, a first-and-last time event; however, most human rights organizations believe that members of the US military have been carrying out violations in prisons since long – the only difference is that these violations are not covered by media and publicized, hence remain unknown to the public.

According to the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, detainees have a right to remedies as stated by article 7, and access to justice (article 8). However, in many instances, victims of abuse have no access to compensation or justice, especially in countries where the judicial system is closely tied to the government or military.

CASE STUDIES

Guantanamo Bay:

Since its establishment in 2002, the Guantanamo Bay detention center has held nearly 800 detainees from around 50 countries. As of 2021, only 39 detainees remained, with many having been held for years without charge. Reports of torture, including waterboarding and prolonged solitary confinement, have raised serious ethical concerns.



Russia:

Russian detention centers have faced scrutiny for their treatment of political prisoners and detainees. It is alleged that detainees often experience harsh conditions, including overcrowding, inadequate medical care, and physical abuse. The case of Sergei Magnitsky, a lawyer who died in a Russian detention center in 2009 after being denied medical treatment, exemplifies the ethical issues within the system. Magnitsky's death led to international condemnation and the implementation of the Magnitsky Act, which sanctions Russian officials involved in human rights abuses. The ethical challenges in Russian detention centers underscore the need for reform and accountability.

China:

China's detention centers, particularly those in Xinjiang, have been criticized for the mass detention of Uyghurs and other Muslim minorities. Reports suggest that over a million people have been detained in what the Chinese government describes as "re-education camps". Detainees have reported forced labor, indoctrination, and physical and psychological abuse. The international community has condemned these practices as violations of human rights and acts of cultural genocide.

Rikers Island Prison (USA):

Rikers Island has long been notorious for its poor conditions and high levels of violence. The facility has faced numerous lawsuits and federal investigations, revealing a culture of brutality and neglect. In 2021, Rikers reported its highest number of deaths in eight years, with many attributed to inadequate medical care and neglect. The ethical concerns at Rikers Island have prompted calls for its closure and the construction of smaller, more humane facilities. New York City has committed to closing Rikers by 2027, aiming to address the systemic issues that have plagued the facility for decades.



Australian Offshore Detention Centers:

Australia's offshore detention centers, established under policies like the Pacific Solution and Operation Sovereign Borders, have been a subject of intense ethical scrutiny. These centers, located on Manus Island in Papua New Guinea and Nauru, were designed to deter asylum seekers from arriving by boat. However, reports have consistently highlighted severe human rights abuses, including inadequate healthcare, mental health crises, and instances of physical and sexual violence. The indefinite nature of detention and the harsh living conditions have led to widespread condemnation from international human rights organizations. Critics argue that these policies violate the UN Convention against Torture and other international human rights laws, raising significant ethical concerns about the treatment of vulnerable individuals seeking asylum.

Japanese American Internment (USA, 1942-1945):

During World War II, the U.S. government forcibly relocated and interned over 120,000 Japanese Americans, two-thirds of these were U.S. citizens which came under the Executive Order 9066. This mass detention was justified on the basis of national security following the attack on Pearl Harbor, however it was fundamentally driven by segregation of race as well as wartime hysteria. The internment camps were labeled as having bad living conditions, loss of property, and severe disruptions to the lives of those detained. The landmark Supreme Court case *Korematsu v. The United States* upheld the constitutionality of the internment, a decision that has since been widely criticized and repudiated. This episode serves as a stark reminder of the dangers of racial profiling and the erosion of civil liberties during times of crisis, highlighting the ethical imperative to protect minority rights even under national security threats.



South African Apartheid-era Detention (1948-1994):

Under the apartheid regime in South Africa, detention without trial was a common tool used to suppress political dissent and maintain racial segregation. Anti-apartheid activists, including prominent figures like Nelson Mandela, were often detained under harsh conditions, subjected to torture, and denied basic legal rights. The Truth and Reconciliation Commission (TRC) later documented numerous cases of abuse and extrajudicial killings, emphasizing the systemic nature of these injustices. The ethical implications of apartheid-era detentions are profound, underscoring the need for accountability and justice in addressing historical wrongs. The TRC's work highlighted the importance of truth-telling and reconciliation in healing a divided society and preventing future abuses of power.

Soviet Gulag System (1930s-1950s):

The Soviet Gulag system, a network of forced labor camps, was one of the most brutal instruments of political repression in the 20th century. Millions of people, including political prisoners, intellectuals, and ordinary citizens, were subjected to arbitrary detention, harsh labor conditions, and severe deprivation. The Gulags were characterized by extreme overcrowding, inadequate food and medical care, and high mortality rates. The ethical violations inherent in the Gulag system are manifold, including the denial of due process, the use of forced labor, and the systematic dehumanization of detainees. This dark chapter in Soviet history serves as a powerful reminder of the dangers of unchecked state power and the importance of safeguarding human rights and dignity.

Several UN resolutions and conventions have been passed to address the treatment of detainees, but they often suffer from loopholes or lack of enforcement.



1. Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR):

The ICCPR (1966) provides the rights of detained individuals, including protection from torture and cruel treatment. Article 10 of the ICCPR CLEARLY states that

- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*
- Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;*
- Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*
- The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.*

Unfortunately, one loophole in the ICCPR is that it lacks a binding enforcement mechanism. Although it does have a monitoring body—the **Human Rights Committee (HRC)**—it can only issue recommendations, not legally binding decisions. So, states are under no obligation to implement the recommendations. This has caused countries like North Korea, which have ratified the ICCPR, to consistently violate its provisions.



2. Convention Against Torture (CAT) and Optional Protocol (OPCAT):

The CAT (1984) prohibits torture and inhumane treatment in detention, an important article being article 13, which states that:

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

This provides the basic right for complaint against mistreatment to prisoners, and has helped improve conditions in jail cells since 1984. Despite ratification of this convention, countries are often reported to mistreat detainees. For example in Turkey, reports of detainee mistreatment, particularly following the 2016 coup attempt are found.

The OPCAT (2002) created the Subcommittee on Prevention of Torture. The subcommittee requires all party states to designate National Preventive Mechanisms (NPMs). These bodies are responsible for visiting places of detention to monitor their conditions, and ensure compliance with human rights standards. NPMs must be independent and adequately resourced to carry out their functions effectively. All states that ratify the OPCAT commit to establishing and maintaining effective NPMs, ensuring their independence. However, one major problem is that the OPCAT's ability to prevent abuse depends heavily on national cooperation – something which is mostly absent in authoritarian regimes. Thus, that makes it harder for these NPMs to exist/operate there.



2. The Nelson Mandela Rules:

The Mandela Rules (2015) set the standard for the treatment of prisoners, laying special emphasis on the dignity and rehabilitation of prisoners.



Countries may formally adhere to the rules but fail in implementation due to overcrowding, inadequate resources, or corruption, as seen in Southeast Asia and Latin America.

FUTURE DIRECTIONS AND RECOMMENDATIONS

Reforming detention policies and practices:

Reforming detention policies and practices is essential for creating a more just and humane criminal justice system. In South Africa, for example, the government has introduced restorative justice programs to address high incarceration rates.



These programs emphasize reconciliation between offenders and victims, aiming to repair the harm caused by criminal behavior. Statistics show that restorative justice has led to a 20% reduction in reoffending rates among participants. Additionally, South Africa has implemented parole reforms, allowing non-violent offenders to serve part of their sentences under community supervision. This approach has contributed to a decrease in the prison population and has improved public safety by ensuring that offenders are monitored and supported during their reintegration process.

Additionally, the Kenyan government has invested in vocational training and education programs within prisons, which have shown promising results. A study found that inmates who participated in these programs were 30% less likely to reoffend upon release. Furthermore, Kenya has implemented measures to reduce pre-trial detention, ensuring that individuals are not held in custody for extended periods without trial. These reforms uphold legal rights and help to reduce prison overcrowding, demonstrating the effectiveness of comprehensive detention policy reforms.

Strengthening international cooperation and standards:

International cooperation facilitates the sharing of best practices and innovations in detention management. Countries can learn from each other's experiences and adopt successful strategies to address common challenges. For example, Norway's prison system, known for its focus on rehabilitation and humane treatment, has been studied and emulated by other countries seeking to reform their detention practices. Norway's approach includes providing detainees with access to education, vocational training, and mental health services, which have been shown to reduce recidivism rates significantly.



By fostering a global dialogue on detention ethics and standards, the international community can work together to create a more just and humane system that respects the rights and dignity of all individuals in detention.

International cooperation plays a pivotal role in monitoring and enforcing standards such as the Nelson Mandela rules. Organizations such as the International Committee of the Red Cross (ICRC) and the United Nations Office on Drugs and Crime (UNODC) work collaboratively with national governments to conduct inspections, provide training, and offer technical assistance to improve detention conditions. For instance, the ICRC regularly visits detention facilities worldwide to assess conditions and ensure compliance with international humanitarian law. These visits often result in recommendations for improvements, which can lead to significant changes in how detainees are treated. Additionally, the UNODC provides support through its Global Programme for the Implementation of the Doha Declaration, which includes initiatives aimed at improving prison management and promoting the humane treatment of prisoners.

Enhancing transparency and accountability:

Enhancing transparency and accountability in detention centers is crucial for ensuring ethical treatment and upholding human rights. One effective approach is the implementation of independent oversight bodies. These bodies should have unrestricted access to detention facilities, allowing them to conduct regular inspections and report their findings publicly. This transparency can deter potential abuses and ensure that any violations are promptly addressed. Additionally, involving civil society organizations in the oversight process can provide an extensive perspective on the conditions within these centers.



Another key strategy is the establishment of clear and enforceable standards for the treatment of detainees. These standards should be based on international human rights laws and best practices, ensuring that all detainees are treated with dignity and respect. Training programs for staff on these standards are essential to ensure they are understood and implemented effectively. Furthermore, there should be mechanisms in place for detainees to report grievances without fear of retaliation. An independent body should review these complaints to ensure they are handled fairly and transparently.

Lastly, leveraging technology can significantly enhance transparency and accountability in detention centers. For instance, installing surveillance cameras in common areas can help monitor interactions between staff and detainees, providing evidence in cases of alleged misconduct. Digital record-keeping systems can also improve the management of detainee information, ensuring that records are accurate and accessible for audits. Additionally, public reporting of data on detention center operations, such as the number of detainees, incidents of misconduct, and outcomes of inspections, can increase transparency. By embracing technological solutions, detention centers can create a more accountable and transparent environment, ultimately leading to better ethical practices.

Promoting alternative approaches to detention:

A promising alternative is restorative justice programs. Restorative justice focuses on repairing the harm caused by criminal behavior through reconciliation with victims and the community. This approach involves mediated meetings where offenders, victims, and community members discuss the impact of the crime and agree on steps the offender can take to make amends.



Restorative justice programs have been shown to increase victim satisfaction, reduce repeat offending, and promote a sense of accountability and empathy in offenders.

Additionally, specialized treatment programs for individuals with specific needs, such as mental health or substance abuse issues, can also serve as alternatives to detention. These programs provide targeted interventions that address the underlying issues contributing to criminal behavior. For example, mental health courts and drug courts offer treatment and support services in lieu of incarceration. Participants in these programs receive comprehensive care, including therapy, medication management, and social services, which can significantly improve their chances of rehabilitation and reduce the likelihood of reoffending. These specialized programs focus on treatment rather than punishment and help individuals achieve long-term recovery.

Lastly, another approach is the use of community-based programs. These programs focus on rehabilitation and reintegration rather than punishment. They include initiatives like electronic monitoring, day reporting centers, and home confinement. These alternatives allow individuals to remain in their communities, maintain family connections, and continue their education or employment. Research has shown that community-based programs can reduce recidivism rates and are often more cost-effective than traditional detention. By providing support and resources within the community, these programs help individuals build a foundation for a more stable and productive future.



Prevention of Torture and Cruel Treatment:

Cruel, inhuman or degrading treatment (CIDT) is a concept existing in international law and refers to the treatment of humans that goes against their human rights in places of detention.

The **Convention against Torture (CAT)** lays down the framework pertaining to CIDT. It prohibits the torture and inhumane treatment of individuals in detention. It defines torture as *“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information....punishing him for an act he or a third person has committed or is suspected of having committed....reason based on discrimination of any kind... It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”*

It also aids in developing the international mechanism to prevent such forms of torture in detention. The **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)** is an international agreement that aims to prevent unethical treatment of prisoners. It was adopted in 2002 and aids in implementing the conditions laid down in the **Convention against Torture (CAT)**. Under this protocol, states around the world concur to international inspections carried out by a subcommittee under the United Nations through an independent **National Preventive Mechanism (NPM)**. The **Subcommittee on the Prevention of Torture (SPT)** operates with a confidential bias and individuals providing information under this committee are not subjected to sanctions. The Committee is able to ascertain the extent to which ethical conditions are being maintained in detention centers and produce reports to make recommendations to the authorities.



As stated in the OPCAT, “A *Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture* (hereinafter referred to as the *Subcommittee on Prevention*) shall be established and shall carry out the functions laid down in the present Protocol...Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention).”

Mandates such as **ICCPR** and **CAT** state the need for prompt investigations into the cruel treatment against prisoners and torture allegations in detention centres. The convention on torture refers to this under article 12, “*Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.*” Many UN frameworks call for inquiries into such issues such as under the Subcommittee on prevention.

Despite this, many challenges exist while investigating the existence of such torture. One of the most prevalent issues is the lack of access to facilities and centers where there exists a need for examination. Human Rights organizations and relevant investigative committees are prevented by the government from scrutinizing such places which makes it difficult to properly assess the degree of the situation. Investigative bodies also usually lack the proper resources, funding and training to be efficient while conducting examinations of detention facilities. There is a need for a thorough procedure and analysis to be followed to ensure that authentic reports are crafted and prosecution is done accordingly.



It is also difficult for victims of torture and abuse in detention to speak up due to the imminent fear of retaliation and punishment from authorities. Societal pressure and stigmas may further discourage discourse by enabling the ostracisation and humiliation of these individuals. Furthermore, another pertinent issue is the lack of support and dedication by governments and bodies to aid organizations. Several legal and judicial barriers stand between investigative bodies and organizations leading to weak frameworks and procedural problems.

Torture and subjection to cruel treatment can have life long impacts on individuals, those around them such as their family as well as the community as a whole. It carries a severe physical and psychological impact on victims that disrupt their lives and may cause barriers to arise between them and society. It inhibits personal development and may lead to post traumatic stress disorder as well as other mental illnesses such as depression. Understanding the impact and consequences of such inflicted torture are a pertinent aspect of working towards the rehabilitation and support of victims. Organizations like the **International Rehabilitation Council for Torture Victims (IRCT)** firmly emphasize on the attention and comprehensive care required to rehabilitate and aid victims of **CIDT**.

Rehabilitation can be divided into 3 main aspects:

1. **Physical Rehabilitation** - One of the most severe consequences to victims of CIDT is torture and abuse that leads to injuries requiring medical assistance. Without proper medical care and attention, wounds and other injuries can develop into serious and life threatening issues. Physical rehabilitation refers to medical treatment, surgeries, and procedures to properly address injuries inflicted due to torture. This rehabilitation also extends to physiotherapy and pain management to ensure sustainable and long term recovery for victims.



2. Psychological Rehabilitation - Alongside physical injuries, many victims experience psychological stress and may develop illnesses due to trauma. To tackle this, measures such as therapy, counseling and psychotherapy play a crucial role. Interventionist measures and medical resources for victims coping with PTSD, anxiety, depression and trauma can be utilized.

3. Social and Community Support - The community plays an important role in enabling a victim to transition back into society without the fear of ostracisation and harm. Reintegration programs such as educational support, vocational training and communal rehabilitation centers can provide individuals with validation and belonging. Such initiatives can also help reduce the stigma surrounding victims of torture, especially in detention facilities and foster recovery and growth.

QARMA

Q1: How can international human rights standards be effectively enforced in detention centers worldwide?

Q2: What legal safeguards are necessary to prevent indefinite detention without trial?

Q3: What mechanisms can be established to ensure detainees have access to legal representation and due process?

Q4: How can international cooperation be enhanced to address and prevent human rights abuses in detention facilities?

Q5: What steps should be taken to provide adequate healthcare and mental health services to detainees?



BIBLIOGRAPHY

- <https://www.bbc.com/news/world-latin-america-38534769>
- <https://www.penalreform.org/issues/prison-conditions/key-facts/overcrowding/>
- https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf
- <https://www.amnestyusa.org/countries/venezuela/>
- <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/venezuela/>
- https://www.un.org/en/events/mandeladay/mandela_rules.shtml
- <https://documents.un.org/doc/undoc/gen/n15/443/41/pdf/n1544341.pdf>
- <https://www.amnesty.org/en/latest/news/2020/04/cambodia-exclusive-footage-reveals-deplorable-prison-conditions/>
- <https://www.hrw.org/reports/pdfs/g/general/general2.936/general2936full.pdf>
- <https://prisons.punjab.gov.pk/system/files/Pakistan%20Prison%20Rules.pdf>
- <https://prisonoversight.org/oversight-resources/international-oversight/>
- <https://www.britannica.com/topic/Abu-Ghraib-prison>
- <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>



- <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>
- <https://guide-humanitarian-law.org/content/article/3/detention-1/>
- <https://www.ohchr.org/en/detention/international-standards-detention>
- <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>
- <https://www.lexipol.com/resources/blog/doing-the-right-thing-the-importance-of-ethics-in-corrections/>
- <https://www.lexipol.com/resources/blog/doing-the-right-thing-the-importance-of-ethics-in-corrections/>
- <https://www.equalrightstrust.org/ertdocumentbank/chapter%206.pdf>
- <https://www.globaldetentionproject.org/>
- <https://www.hrw.org/legacy/advocacy/prisons/stndrds.htm>
- <https://documents.un.org/doc/undoc/gen/g14/244/51/pdf/g1424451.pdf>
- <https://www.ohchr.org/en/detention/international-standards-detention>
- <https://academic.oup.com/book/55174/chapter-abstract/424258527?redirectedFrom=fulltext>
- <https://www.aljazeera.com/news/2023/11/29/jailed-without-charge-how-israel-holds-thousands-of-palestinian-prisoners>
- <https://humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>



- <https://www.amnesty.org/en/what-we-do/torture/>
- <https://academic.oup.com/jhrp/article/1/1/101/2188612>
- https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/Torture_Prevention_Guide.pdf
- <https://www.osce.org/files/f/documents/2/a/385497.pdf>
- https://euaa.europa.eu/sites/default/files/publications/2023-03/2023_Victims_of_Torture_Identification_support_and_examination_of_claims_Mapping.pdf
- https://irct.org/wp-content/uploads/2022/05/IRCT_Global_Standards_on_Rehabilitation_of_torture_victims_2020.pdf
- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9534006/>
- <https://atdnetwork.org/alternatives-to-detention/>
- <https://www.americanimmigrationcouncil.org/research/alternatives-immigration-detention-overview>
- <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>
- <https://www.ohchr.org/en/about-arbitrary-detention>
- <https://www.unhcr.org/what-we-do/protect-human-rights/asylum-and-migration/detention>

