

Forum: Special Committee on SDG 16

Issue: Reforming the criminal justice system and developing alternatives to imprisonment

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Introduction

Currently, there are more than 11 million people worldwide being held in prisons. Incarceration has many functions: it serves as a punishment for crimes committed, maintains public safety by keeping dangerous individuals off the streets, and rehabilitates criminals so that they may leave behind a life of crime in favor of becoming productive members of society. In actuality, many of our criminal justice systems fail to meet these goals leaving much to be desired in creating positive outcomes for the lives of convicts and for society at large.

Incarceration calls for the ultimate form of punishment- the deprivation of liberty. Therefore, incarceration should be reserved as punishment for only the most severe crimes and only the most deserving criminals. Numerous crimes which are currently punishable by incarceration would be much more morally and logically better punished by alternative criminal justice methods. When fitting the crime, alternatives to imprisonment have proven to be more effective in encouraging positive change within convicts and thus curbing recidivism than incarceration.

For individuals who commit the remainder of crimes where imprisonment is the appropriate sentence, there are many changes that need to be made. Starting from before a person has been found innocent or guilty, there exist faults in our current criminal justice systems. Pretrial detention is a period in which officials regularly exploit to do unconscionable things in the way of using coercion to extract statements from suspects. Bail, the practice which these convicts rely upon to free themselves from this sentence, is rigged in favor of the wealthy. An ultimately, when those who are found guilty end up in prisons, they are subjected to deplorable conditions which tend to perpetuate the cycle of crime in their lives and exacerbate pre-existing issues in the prisoners' lives.

Definition of Key Terms

Bail

Bail is the condition by which a prisoner is temporarily released from custody as a security for their appearance in court on their trial date. A common form of bail is the deposit of a sum of money, an amount which is usually proportionate to the severity of the crime. Other forms of bail include property as collateral, forfeiting of passports, and requirements to report to police. In the case of monetary bail, a refund is given if the individual shows up to their trial. Cases where bail is denied include when the suspect is: a flight risk (liable to flee), a repeat offender, likely to pose a threat to others, or suspected of a very severe crime such as murder, rape, or manslaughter.

Circle Sentencing

A process by which the sentence for an offender is determined outside of the courtroom. Circle sentencing calls for the offender, victim, those indirectly victimised, and prominent community members to have a discussion in a circle. The discussion revolves around why the crime has been committed, how it's affected the community, and what changes the offender can implement to avoid reoffending. After a set period of time, the circle will reconvene to discuss how the offender's plan is going and make any necessary adjustments.

Custodial Sentence

A custodial sentence is imposed in a court hearing for a criminal case and requires detainment of the convict. Custodial sentences are reserved for severe crimes where it is believed that neither a fine nor community service can suffice as punishment.

Incarceration

Detention in a prison as punishment for committing a crime.

Penal

Describes punishment for an offender given by a legal justice system. (E.g. a prison is a 'penal institution').

Recidivism

Recidivism refers to convicted criminals reoffending.

Restorative Justice

Restorative justice focuses on the rehabilitation of the offender and their reintegration into the community by drawing from three foundational principles. The first is the acknowledgement that crime

causes harm and justice should offer redress for said harm. Secondly, restorative justice aims to engage victims or the families of victims in discussion with the offender. Lastly, the result should better the community and see a fundamental change within the offender.

Background Information

Pre-trial Detention

It is currently estimated that 30% of the international prison population is composed of people awaiting trial. These people have yet to be proven guilty for any offence, but often face conditions equal to, if not worse than, incarcerated convicted criminals. The imprisonment of people awaiting trial contributes to existing problems within prison systems such as overcrowding and resource shortages. Incarcerated individuals awaiting trial are especially vulnerable to acts of violence or other acts of coercion on the part of prison guards, fellow prisoners, and police with the goal of extracting a confession or statement. Lastly, it is more difficult for an incarcerated individual to access legal aid and prepare well for trial.

Issues Facing Prisoners

Overcrowding

Penal Reform International reports that prison capacity is being exceeded in at least 115 countries. Prisoners are made to live in a cell for up to 23 hours in a day and in cases where capacity is exceeded conditions can be so severe that prisoners sleep on top of one another or tie themselves to prison bars to they can sleep while standing. Overcrowding has been found to encourage the spread of communicable diseases such as tuberculosis and negatively impact hygiene and health of both prisoners and staff members.

Privatization of Prisons

Prison privatization has grown in popularity namely due to economic benefits- it often costs taxpayers less to fund a private prison because they maintain a higher allocative efficiency than governmental bodies can achieve. However, since private prisons are profit driven, their goals are often discordant with those of society and the rights of the prisoners. Private prisoners are more susceptible to corruption and often less staff than public prisons to cut costs. Less staff has lead to higher rates of inmate on inmate violence. Prisoners in private prisons also tend to serve longer sentences because their continued incarceration is profitable, this creates an obvious moral issue.

Effect of Justice System on Marginalized Groups

The experiences of all groups of people within the prison system are not equal. Certain marginalized groups, such as indigenous people, the mentally ill, and women, are disproportionately affected by some issues and have unique tribulations.

Indigenous People

In many nations, indigenous peoples are overrepresented in prison populations. This is trend is evident in Canada, Australia, the United States, and New Zealand. Indigenous people are routinely criminalized for acts related to poverty, lack of education, mental illness, substance abuse, and histories of sexual abuse- all things which bear the markings of colonialism.

Imprisonment of the Mentally Ill

Individuals with a mental illness who are imprisoned subsequently lose the opportunity to, or are more restricted from, receiving proper treatment for their illnesses. The mentally ill are disproportionately represented in prison populations and some studies have found they have longer average stays- about twice as long as their non-mentally ill counterparts. This occurrence happens in part because the mentally ill tend to have less money for bail and fewer people in their lives who would be willing to get them out of jails.

In many cases, individuals with mental illness are not of sound mind and cannot be held criminally responsible for the crimes they commit. In such instances, these individuals should be admitted into psychiatric facilities or receive similar modes of help. However, when it is found that a criminal with mental illness is criminally responsible for their actions, it is necessary that prisons provide proper mental health resources for such individuals including support staff and access to national mental health plans.

Women

While the rate of women's incarceration worldwide is lower than that of men, conditions in many women's prisons are even worse that of men. Whereas men tend to be incarcerated in higher rates for violent crimes, there is a higher proportion of women serving time for drug related offenses. Despite this disparity, alcohol and drug related counseling is even less available in women's prisons. Health care, especially prenatal care, which is necessary for the health of women is largely missing from prisons. Additionally, the practice of shackling women down during delivery is still prevalent despite condemnation from health care professionals. Imprisoned women are especially vulnerable to HIV/AIDs. In West and Central Africa, HIV rates in women's prisons are almost double that of men's. In Central Asia and Eastern Europe, their almost three times higher.

Imprisoned women are also extremely vulnerable to sexual abuse. Sexual assault and rape in men's prisons is a topic of familiarity and quite often mentioned off-handedly, yet reports have shown that imprisoned women are more likely to experience sexual assault and rape at the hands of male guards and staff. Furthermore, many legal systems don't include prison sexual assault and rape in their reports of sexual assault allowing for erasure of the problem.

Major Countries and Organizations Involved

United Nations Office on Drugs and Crime (UNODC)

The UNODC is a United Nations body which was established in 1997 when the United Nations Drug Control Programme and the Centre for International Crime Prevention merged. The organization aims to reduce crime, terrorism, and trafficking of illicit drugs worldwide. On the issue of criminal justice reform, the UNODC works in the following six areas: police reform, restorative justice, prosecution service, judiciary, prison reforms and alternatives to imprisonment, and access to legal defense and legal aid. The UNODC and its previous bodies have adopted numerous resolutions relating to the aforementioned issues.

Penal Reform International (PRI)

First established in 1989 by a group of international criminal justice advocates, PRI has four main goals: ensuring that criminal justice systems uphold the law in respect to treatment of defendants and suspects, sentences given are fair and proportionate to the crime committed, prisoners are treated humanely and provided with fair conditions, and reduction of recidivism. Penal Reform International realizes its goals by partnering with institutions on the local, national, and international level to implement programs which promote the upholding of human rights.

World Health Organization (WHO)

The World Health Organization is the body responsible for public health matters within the United Nations. Of interest to the WHO has been the issue of prison conditions. The WHO works to prevent the spread of disease within prisons and improve access to physical and mental health services.

United States of America (USA)

The United States currently has the highest incarceration rate in the world with a rate of 760 out of every 100,000 citizens being incarcerated. For the larger part of the 20th century, the US's incarceration rate sat below the international average, however, since the 1980s War on Drugs the

number of offenses punishable by prison time and the length of prison sentences (due largely to the enforcement of mandatory minimums) has increased.

Norway

On the opposite side of the spectrum from the USA, Norway is known to have one of the best prison systems in the world. Its incarceration rate sits at just 75 per 100,000 people and their recidivism rate is one of the lowest in the world, 20%. Norway also has a low crime rate, so what are they doing right? Norway takes a much less punitive approach than most prisons, focusing much of its energy on the restorative justice process in order to best encourage rehabilitation. With few extreme exceptions, genocide and war crimes among them, the maximum sentence a judge can give is 21 years. Additionally, their prisons aim to facilitate “normalcy”. There are no barred windows on cells and ample vocational programs. Prisons are constructed taking into account research that shows strict incarceration correlates with high recidivism rates.

Relevant UN Treaties and Events

- United Nations Standard Minimum Rules for Treatment of Prisoners 1955 **663 C (XXIV)**
- International Covenant on Civil and Political Rights (ICCPR) 16 December 1966 **2200A (XXI)**
- Code of Conduct for Law Enforcement Officials 17 December 1979 **(A/RES/34/169)**
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) 14 December 1990 **(A/RES/45/110)**
- Principles for the Protection of Persons with Mental Illness 17 December 1991 **(A/RES/46/119)**
- United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems 28 March 2013 **(A/RES/67/458)**
- United Nations Standard Minimum Rules for Treatment of Prisoners reformed 17 December 2015 **(A/RES/70/175)**

Previous Attempts to Solve the Issue

Restorative Justice

Restorative justice, a criminal justice process which focuses on reducing recidivism by engaging in conversation with victims and community members, has been prominently used within Canadian and Australian native populations. This process has been implemented in the sentencing processes of indigenous communities as an attempt to curb high crime and incarceration rates. Canada has found that

restorative justice has been more effective in increasing victim-offender satisfaction and reducing recidivism than traditional criminal justice approaches. In the United Kingdom, government analysis has shown that individuals who go through restorative justice process are 14% less likely to offend. Additionally, the government spent 87.5% less on restorative justice than traditional punishment.

Abolition of the Death Penalty

Due to questions surrounding the morality of the death penalty, 106 countries have chosen to abolish it. Additionally, organizations such as Amnesty International relay that there is no strong scientific evidence that suggest the capital punishments deters crime in any way. Lastly, research has shown that the death penalty is not used fairly across all trials with racial biases playing part in who gets the death penalty. In the US, states without the death penalty have lower murder rates. Many countries who have done away with the death penalty have experienced dips in their murder rates as well.

Possible Solutions

Alternatives to Pre-trial Detention

In order to parry the issues that arise from pre-trial detention, there are several alternatives that can be used. In lieu of detaining suspects to ensure their appearance at court, officials can withhold official travel documents, such as passports or visa, or personal identification information until the set court date. Another alternative is placing the suspect on house-arrest with an ankle monitoring device or a similar tracking instrument. Lastly, a suspect can be required to stay under the supervision of a third party custodian or within community housing such as a halfway house.

Eliminating Life Sentence Without Chance of Parole

Life sentence without parole is increasingly being recognized as morally wrong as individuals have their liberty permanently taken away with no amount of reform on their part being able to change that. Sentencing people to serve in prison for life without the chance of parole is also counter to the rehabilitation goals of the justice system thus many groups advocate that in any instance where a convicted criminal is given a life sentence, parole should also be available.

Eliminating Monetary Bail

The premise of monetary bail sets up an unfair advantage for suspects that are wealthy or have wealthy connections, effectively discriminating against the poor and not serving as a sufficient obstacle for the well endowed. Two possible approaches to this problem exist: alter the way in which monetary bail is set and eliminating monetary bail. If the justice system were to alter the way in which monetary bail is set it would be reasonable to set bail for each crime not only in relation to the severity of the crime committed but also taking into consideration the financial status of the suspect. This approach presents

some difficulties in the aspect of trying to determine the financial status of individuals, therefore, the latter approach appears to be the more feasible of the two. In place of monetary bail, practices such as those described in the 'Alternatives to Pre-trial Detention' section can be used.

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Appendices

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2. https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf (UNODC's Handbook on Basic Principles and Promising Practices on Alternatives to Imprisonment)
3. <https://www.penalreform.org/> (Penal Reform International's Website)
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