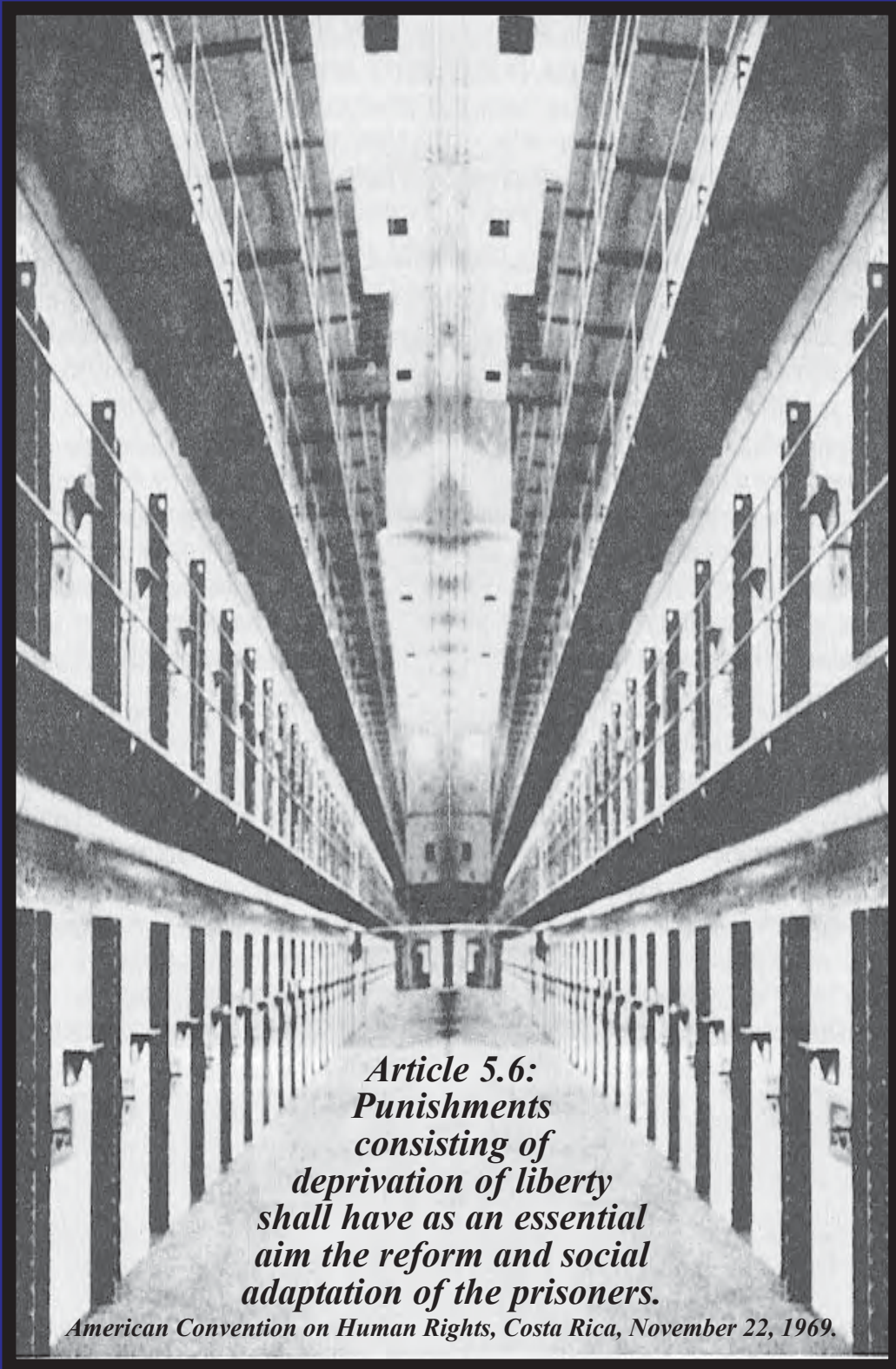


Dignity of the Individual
La Dignidad de la Persona Humana
La Dignité de la Personne Humaine
A Dignidade da Pessoa Humana



EVALUATION OF PRISONS
IN
THE ORGANIZATION OF AMERICAN STATES

Citizens United for Rehabilitation of Errants
Third International Conference - June 2006



*Article 5.6:
Punishments
consisting of
deprivation of liberty
shall have as an essential
aim the reform and social
adaptation of the prisoners.*

American Convention on Human Rights, Costa Rica, November 22, 1969.

Dignity

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EVALUATION OF PRISONS

IN

THE ORGANIZATION OF AMERICAN STATES

International CURE

Citizens United for Rehabilitation of Errants

Third International Conference June 2006

Prison Photos by Alan Pogue

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Kim Pathways, Publisher, Katonah, NY

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Back cover: *Double view of Auburn cell block.*

International CURE

Citizens United for Rehabilitation of Errants

Advocating for more restorative justice systems

- 1. Alternatives to incarceration; incarceration only when absolutely necessary.**
- 2. Programs during incarceration that enable individuals to turn their lives around.**
- 3. Post-release programs that support a successful reentry back into society.**

CURE

Citizens United for Rehabilitation of Errants, Inc.

Dear Friends,

The first line of the *American Declaration of the Rights and Duties of Man* states that “the American peoples have acknowledged the dignity of the individual.” In the other three official languages of the Organization of American States (OAS), it is *La Dignidad de la Persona Humana* in Spanish, *La Dignité de la Personne Humaine* in French, and *A Dignidade da Pessoa Humana* in Portuguese.

The Ninth International Conference of American States approved this *American Declaration* in 1948 and also created the OAS. The OAS Charter adopted, proclaimed the “fundamental rights of the individual” as one of its basic principles.

In this spirit, we have compiled reports on the prison systems of all thirty-five countries of the Organization of the American States. The reports are in two publications. The first is in English and the second is the same content, but in the primary language of the country. We are presenting the first report during CURE’s Third International Conference on Human Rights and Prison Reform, in Washington from June 24th to June 27th, 2006.

CURE is a grassroots criminal justice reform organization. The majority of our leaders and members are citizens who have either been incarcerated or have had a loved one who is or was incarcerated. This document reflects that grassroots nature.

More than one hundred persons from throughout the Americas have been involved in the production of these reports. These are volunteers - not professional penologists or academics. They are individuals who, because they have been touched by the criminal justice system in some way, are keenly interested in how these systems work, how they compare, and what we can do to make them better. Each has done his or her best to find answers to a set of questions. As expected, some have been more successful than others. All have learned a great deal.

There are a few people whose contributions we wish to highlight. Dr. Tony Payan encouraged his class at the University of Texas at El Paso to perform research and help with the translations. Ken Robison, whose son, Larry, was executed by the State of Texas in 2000, performed research on five countries and assisted with the translations. Finally, we would especially thank Dr. Creasie Finney Hairston, Dean of the Jane Addams College of Social Work, University of Illinois at Chicago. As co-sponsor of the 2006 CURE conference, the College has provided much of the support for the publication and distribution of these reports. The College also co-sponsored the publication of the Proceedings of our first conference in 2001. Also, as in that publication, so in this publication, we have the packaging and production by Rudy and Betty Cypser and the photography of Alan Pogue.

We will close with the facts that the Organization of the American States is the oldest regional organization in the world dating back to 1860, and the *American Declaration of the Rights and Duties of Man* is even older than the *Universal Declaration of Human Rights*.

Thus, it is most fitting that the first concept of this *American Declaration* be the title of these prison reports. The “Dignity of the Individual” must permeate all government activities and is most tested in the operation of its prisons.

Charles Sullivan, Executive Director
International CURE

Kay Perry, Chair
International CURE

Human Rights in the Americas

The Organization of American States (OAS) adopted the American Declaration of the Rights and Duties of Man in 1948. Among the rights and duties it defines, Article XXV states that:

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.

In the same year, the Universal Declaration of Human Rights was adopted by the United Nations General Assembly. In its Preamble, the Declaration asserted that:

recognition of the inherent integrity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

and Article 5 proclaimed that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The American Convention on Human Rights signed in 1969 echoed the language from the Universal Declaration and the 1966 International Covenant on Civil and Political Rights, stating in Article 5 – Right to Humane Treatment – that:

No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Article 5 also requires the separation of juveniles from adults and their special treatment appropriate to their status as minors; the segregation of sentenced and pretrial prisoners; and states that “punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaption of the prisoners”.

It was no coincidence that the key documents produced after the end of the Second World War and during the Cold War spelled out the universality of human rights and the rights of people deprived of liberty. The generation that produced them had witnessed the worst that a state can inflict on human beings in its power. They saw how the dehumanization of particular groups and the sanction of the state for their degradation and abuse, could lead to the institutionalized abuse of human rights. As international prison reformer, Baroness Vivien Stern has so eloquently expressed it, “Detained people are included because human rights extend to all human beings. It is a basic tenet of international human rights law that nothing can put a human being beyond the reach of certain human rights protections. Some people may be less deserving than others. Some may lose many of their rights through having been imprisoned through proper and legal procedures. But the basic rights to life, health, fairness and justice, humane treatment, dignity and protection from ill treatment or torture remain. There is a minimum

standard for the way a state treats people, whoever they are. No one should fall below it.”¹

The OAS further defined the rights of people deprived of liberty through the Inter-American Convention to Prevent and Punish Torture (1985) which defines torture as “any act intentionally performed whereby physical or mental pain or suffering is inflicted.....Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.” The Inter-American Convention on Forced Disappearance of Persons (1994) requires every person deprived of liberty to be held in an officially recognized place of detention and be brought before a competent judicial authority without delay. It also requires that states maintain up-to-date registries of their detainees and make them available to relatives, judges and attorneys.

The InterAmerican Commission on Human Rights is the body charged by the OAS “to promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter.” The Commission examines petitions filed by individuals who claim the violation of a protected right and may recommend measures to be carried out by the state to remedy the violation. If the country involved has accepted the Inter-American Court’s jurisdiction, the Commission may submit the case to the Court for a binding decision.

The Commission also conducts on-site visits to member countries, at their invitation, to analyze and report on the status of human rights. It has recently appointed a special rapporteur for the rights of people deprived of liberty.

Recognizing the commitment of the OAS to upholding human rights throughout the Americas, we have focused the questions asked by this survey on those generally accepted rights applicable to persons deprived of liberty.

The assertion of an inalienable right to human dignity should form the basis for review of all prison conditions.

Footnotes:

¹ Vivien Stern, *A Sin Against the Future: Imprisonment in the World*, Penguin Books, Harmondsworth, England, 1998.

Article 8. Any person or group of persons who consider that their human rights have been violated may present claims or petitions to the inter-American system for the promotion and protection of human rights in accordance with its established procedures.

Inter-American Democratic Charter, 2001.

OPCAT

**Optional Protocol to the United Nations Convention
Against Torture and Other Forms of Cruel,
Inhumane, or Degrading Treatment or Punishment.**

**a practical tool to prevent torture
and other forms of ill-treatment
in the Americas**



The recent attempts to undermine the absolute prohibition of torture and other forms of ill-treatment have forced the human rights community as a whole to re-state their support to the struggle against such inhuman practices in general, and to insist on the pressing need to adopt concrete measures to prevent them from occurring. This international conjuncture has led both Ms. Louise Arbour, UN High Commissioner for Human Rights, and Mr. Don McKinnon, Secretary General of the Commonwealth, to focus their 2005 International Human Rights Day declarations on this issue.

With over 140 State parties, the Convention against Torture is one of the most widely ratified human rights treaties. This should be an indication of the support given to this idea of absolute prohibition of torture throughout the world. However, it is of common knowledge that many of those States that have adhered to the Convention have failed to comply with their obligation to take all necessary measures to prevent torture and ill-treatment. This conclusion has led many to express the need to complement the legal protection with a practical instrument.

On 18 December 2002 the UN General Assembly adopted, by an overwhelming majority¹, the *Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), which seeks to establish a system of regular visits to places of detention, to be carried out by international and national independent expert bodies. No other global international treaty provides for such concrete action to prevent torture.

From the early days of the negotiation process, many American countries were heavily involved. The Working Group which was set up by the UN Commission on Human Rights in 1991 to prepare what came to be known as the “Draft Optional Protocol (to the UN Convention against Torture)” was chaired by Costa Rica. After ten years of negotiation, in 2001, Mexico suggested the preventive framework envisaged by the Draft Optional Protocol — which was until then limited to visits by an international Subcommittee on Prevention operating globally — be expanded and complemented by a national component. This proposal broke the deadlock and, shortly thereafter, the Working Group agreed on a final version, which was then submitted to the Commission on Human Rights during its 57th session in 2002 for its approval.

A global campaign

The Association for the Prevention of Torture (APT)², an international NGO based in Geneva, Switzerland, has been closely involved in the development of the OPCAT. Now, the APT has been entrusted by the Coalition of International NGOs against Torture (CINAT)³ to lead an international campaign promoting ratification and entry into force of this innovative treaty. The APT is one of various actors, operating both within and outside CINAT, calling for universal ratification and implementation of the OPCAT.

At the regional level, the Inter-American Institute for Human Rights co-authored, together with the APT, a comprehensive manual on the OPCAT, which is now available in English, French, Spanish, Portuguese, Russian and Georgian. On top of that, countless human rights NGOs operating in most American States — including the United States — wholeheartedly support the OPCAT and have launched local initiatives aimed at convincing their respective governments to adhere to this new treaty.

Since its adoption by the UN General Assembly, global and regional human rights institutions have consistently expressed support for signature and ratification of the OPCAT. Unsurprisingly, the UN Committee against Torture (CAT) has repeatedly recommended that States Parties consider ratifying the Optional Protocol⁴. Although the UN Human Rights Committee, the treaty body which emanated from the International Covenant on Civil and Political Rights, has not urged States to consider ratifying the OPCAT, it has indirectly shown the way to States appearing before it insisting that they “put in place independent monitoring bodies”⁵ or that they “take urgent and effective measures to prevent arbitrary detention and torture by State agents”⁶.

Although the Inter-American human rights system has refrained from making explicit reference to an international treaty which falls outside the realm of its jurisdiction, it has urged member States to address ill-treatment and inadequate conditions of detention which, on too many occasions, have led to episodes of extreme violence. The governments of Brazil, Guatemala and Honduras, to name but a few, have had to deal with casualties in prison and are now looking at ways to come to terms with those “social ticking bombs”.

While independent and regular monitoring is no miracle solution, it can be argued that regular visits by the national and international mechanisms contemplated by the OPCAT to all places of deprivation of liberty, including transitory detention facilities and military barracks, together with a similarly cooperative response by government officials, can contribute to a broad reduction in cases of ill-treatment.

The OPCAT is of particular relevance to the Americas, a region which, unlike Europe, does not come with a regional visiting body. While it is true that a Special Rapporteur on the Rights of People Deprived of Their Liberty was appointed by the Inter-American Commission on Human Rights in 2001, and that the current mandate-holder, Mr. Florentín Melendez, has conducted a number of visits since he took on the position⁷, this mechanism lacks the financial and human resources necessary to undertake an extensive program of visits.

No matter how we look at it, by no means does the work undertaken by Mr. Melendez match that of the European Committee for the Prevention of Torture (CPT), a body of independent experts responsible for carrying out visits to all 53 member States of the Council of Europe. Since it was established in 1990, the CPT, whose work has greatly inspired the drafters of the OPCAT, has established itself as a reference in the field of torture prevention, and has developed an expertise equally recognized throughout the region by State actors and civil society organisations. The IACHR Special Rapporteur acknowledges the limitations of its action, and has, many times, advocated for the ratification of the OPCAT by American States, to increase the number of visits made to all types of detention facilities, including psychiatric institutions and rehabilitation centres for young offenders.

The challenge of implementing the OPCAT

The implementation process should not prove too problematic in most countries of the region, which boast effective national human rights institutions (ombudsman’s offices, national human

rights commission) whose mandate already includes monitoring places of detention, as well as committed and active human rights NGOs dedicated to combating torture. These existing torture-prevention components should ease implementation of the OPCAT in the region.

In March 2006, participants from the National Human Rights Institutions (NHRIs) of all Central American States – Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama – gathered in Panama City for a seminar on the role of NHRI in torture prevention. The seminar, jointly organized by the APT, the Inter-American Institute for Human Rights and the Panama Ombudsman Office (*Defensoría del Pueblo de Panamá*) addressed the need for NHRIs to actively promote adhesion to the OPCAT by their governments.

For their part, the NHRI of Central America, acting under the umbrella of the Central American Ombudsmen's Council (*Consejo Centroamericano de Procuradores de Derechos Humanos — CCPDH*) wholeheartedly support ratification of the OPCAT by their governments. This commitment was formally voiced in September 2005, when the CCPDH issued a declaration in which all of its member institutions vowed to promote the Optional Protocol at the national level.

Conclusion

During the November 2004 session of the Committee against Torture, Argentina publicly announced its ratification of the OPCAT. The gesture was positively interpreted by the Committee as palpable evidence of Argentina's commitment to the prevention and eradication of torture. The APT likes to think that other countries could take the same courageous step forward in the near future.

In the framework of this global campaign, the APT has identified a number of countries as possible “early ratifiers” of the OPCAT, where the political will to reform the penitentiary system already exists, or where structures and practices for the prevention of torture are already in place. Within the Americas, it has to be said that the campaign has made remarkable progress. On May 23, 2006, Honduras and Bolivia ratified the OPCAT. This means we now have the 20 required State Parties; seven (Argentina, Costa Rica, Mexico, Paraguay, Uruguay, Honduras, Bolivia) are from the region, while others have signed the OPCAT and progressed a great deal towards ratification. Therefore the OPCAT has entered into force on June 23, 2006.

Philippe Tremblay
OPCAT Campaign
Coordinator
Geneva, Switzerland

Footnotes:

¹ One hundred-and-twenty-seven voted in favor, forty-two abstained and only four states voted against the OPCAT. At the regional level, 35 countries supported the OPCAT, seven countries abstained — Bahamas, Belize, Cuba, Grenada, Guyana, Jamaica and Saint Lucia— and only the United States opposed it.

² <www.apr.ch>

³ <www.cinat.org> The CINAT also includes Amnesty International, the World Organization against Torture (OMCT), the International Federation of Action by Christians for the Abolition of Torture (FIACAT), the International Commission of Jurists (ICJ), the International Centre for the Rehabilitation of Torture Victims (IRCT) and the Redress Trust.

⁴ See for example the recommendations made to Canada (CAT/C/CR/34/CAN), 5(j), 7 July 2005 and Ecuador (CAT/C7ECU/CO/3), pt 29 (8 February 2006).

⁵ UN Doc. CCPR/C/82/L/MAR (2004).

⁶ UN Doc. CCPR/CO/80/UGA, 4 May 2004, paragraph 17.

⁷ Argentina (2004), Honduras and Guatemala (2004).



Antigua and Barbuda



CRIMINAL JUSTICE

Indigents. There is a public defender system of providing counsel to indigent defendants, but only for capital cases, and not for others. All defendants have the right to a defender but at their own expense, or they may represent themselves in court.

Juveniles. The Juvenile Act of 1951, currently good law, defines a juvenile as a person under the age of 16 years. Section 3 of the Juvenile Act also states that no person under the age of 8 years shall be guilty of an offence. Thus, the minimum age for criminal responsibility of a child is 8 years.

Section 15 of the Juvenile Act states that the Commissioner of Police should keep juveniles separate from adults if they are being detained in a police station, or being conveyed to or from a criminal court. According to the U.S. Department of State, and its Country Report on Human Rights Practices, juveniles are housed separately from adult inmates. There are separate prisons for juveniles. Thirty juveniles are set up for rehabilitation in The Boys' Training School, which is a Borstal-type institution that was established under the Training Schools Act of 1891. It serves as a rehabilitation centre for boys who come in conflict with the law.

Death Penalty. The death sentence is still enforced in Antigua and Barbuda for two criminal offences - murder and treason. Section 3 of the Offences Against the Person Act, Cap. 58, states that "whosoever is convicted of murder shall suffer death as a felon". No person under the age of 18 years can be sentenced to death for any crime. Since the law does not stipulate sentence length for murder, it can be inferred that it is possible for a sentence of life imprisonment to be imposed on someone who is under 18 years of age. There are 8 sentenced to death, but there have been no executions since 1991. They do have sentences of life without possibility of parole.

PRISON SYSTEMS

Structure. The country does not have separate federal (national) and state prison systems. There is only one facility, Her Majesty's Prison. Pre-trial detainees are held separately from convicted prisoners. There were 52 pre-trial prisoners and 186 sentenced prisoners in 2004. 28.3% of the prison population is pre-trial detainees.

In May, 42 persons were reportedly being held on remand. According to the prison superintendent, a shortage of space in the prison required placing some of those held on remand with convicted prisoners.

Standards. There are statutory, written prison standards, which are enforced by the police. According to the U.S. Department of State's Country Report on Human Rights Practices, the prison conditions are poor. Prison services were inadequate, particularly recreation and rehabilitation facilities. The prison did not have toilet facilities, and slop pails were used in

122 cells.¹ Prison staff complained anonymously to the press about the poor conditions, including a reported increase in the number of prisoners who had HIV/AIDS and charges that certain inmates were made into “sex slaves” by other prisoners.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Prisoner Abuse. They do prohibit corporal punishment, torture, dark cells, or any other cruel, unusual or degrading treatment. It is prohibited by the Antigua and Barbuda Constitution of 1981, and the authorities generally respected these prohibitions in practice. However, there were occasional reports of police brutality and threatening behavior and allegations of abuse by prison guards.

SERVICES FOR INCARCERATED PERSONS

Rehabilitation Programs. In Oct. 2003, ministers of the justice met with other ministers of the Americas and the U.S. to discuss the problems of rehabilitation and how to fix it. The topic of the meeting was how to “resocialize” prisoners before letting them back into society.

RIGHTS OF INCARCERATED PERSONS

Voting. Pre-trial unsentenced prisoners have the right to vote, but once they have been convicted and sentenced, the right is taken away.

SOURCES:

<<http://www.state.gov/g/drl/rls/hrrpt/2004/41745.htm>> Website of U.S. Department of State, Country Reports on Human Rights Practices (2004).

<http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/caribbean_records.php?code=57> From the International Centre for Prison Studies.

<<http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8274.htm>> Website of U.S. Department of State: on Antigua and Barbuda, Country Reports on Human Rights Practices, Released by the Bureau of Democracy, Human Rights, and Labor, March 4, 2002.

<<http://www.driverheaven.net/showthread.php?t=11604>> Driver Heaven list of countries that still allow death penalty.

<<http://hrw.org/reports/2005/us1005/9.htm>> Human Rights Watch, Just Sentences for Youth: International Human Rights Law.

<<http://www.georgetown.edu/pdba/Constitutions/Antigua/antigua-barbuda.html>> Antigua Constitution, which explains the rights of the convicted.

<<http://web.amnesty.org/library/Index/ENGAMR580022000?open&of=ENGATG>>

<<http://www.amnesty.org.uk/deliver/keyword/2006.html>>- death penalty

<<http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm>> OPCAT question.

Committee on the Rights of the Child –Consideration of Reports Submitted by States Parties Under Article 44 of the Convention-Initial reports of States parties due in 1995-Antigua and Barbuda- [4 February 2003].



Article 2. All Persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

American Declaration of the Rights and Duties of Man, 1948.

Argentina

CRIMINAL JUSTICE

Indigents. Argentina has a public defender system which provides counsel to indigent defendants. The national constitution indicates the obligation of the state to provide official counseling as soon as a person is involved in a criminal investigation and until the end of the process.

Juveniles. Young people 18 years of age are considered adults for the purposes of the criminal justice system. Juveniles are kept separately from adults in prisons. There are separate prisons for juveniles.

Death Penalty. They do not have a death penalty. Almost all sentences have the possibility of parole, but there is no chance of parole for re-offenders.

PRISON SYSTEMS

Structure. The country does have separate federal (national) and state prison systems. In the federal system there are 32 prisons. In spite of the fact that they were originally designated as either pre-trial prisons or sentenced prisons, the truth is that actually prisoners are mixed up. Most incarcerated people have no final sentence (after all appeals).

Standards. Basically, Argentina has a very advanced set of laws on the formal level. On the *de facto* level almost none of them are enforced.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. All prisoners receive instructions on what is expected of them and are told what the rules are. The guards enforce the rules by prisoner mistreatment. There are really no channels for prisoners to communicate to outside officials.

Prisoner Abuse. On the official government level they do not allow corporal punishment, but on the unofficial level it is still a common practice.

SERVICES FOR INCARCERATED PERSONS

Health Care. There is no healthcare that takes care of minor problems, but there is one that takes care of major life threatening situations.

Rehabilitation Programs. The prisons do have work and recreation programs. There is little assistance given to the prisoners to help them rehabilitate themselves, such as educational programs.



Reentry Programs. Programs for pre-release or re-entry assistance for prisoners do exist in theory; though usually not in practice.

RIGHTS OF INCARCERATED PERSONS

Voting. Pre-trial and sentenced prisoners do not have the right to vote in either the federal system or in the local systems.

Visitation. The families can visit but must provide their own transportation to and from the prison.



Article 5. Every person has the right to the protection of the law against abusive attacks upon his honor, his reputation, and his private and family life.

American Declaration of the Rights and Duties of Man, 1948.

Bahamas

CRIMINAL JUSTICE

Indigents. Arrested persons may hire an attorney of their choice, but the government only provides legal representation to destitute suspects charged with capital crimes. In a 2003 report, Amnesty International estimated that 41 percent of inmates did not have legal representation at their trial. Local legal professionals and human rights observers believed that this lack of representation risks hasty convictions on the basis of unchallenged evidence, particularly in the case of poor or illiterate defendants. (U.S. State Department)



Juveniles. There are many detained youth. The maximum-security building at Fox Hill has a separate section for juvenile offenders between the ages of 16 and 18. According to the US State Dept., there was also occasional mixing of juveniles with adult inmates depending upon the severity of their crimes. Offenders younger than 16, along with children made wards of the court by their parents because of “uncontrollable behavior,” were held at the Simpson Penn Center for Boys and the Williamae Pratt Center for Girls.

Death Penalty. Bahamas has a death penalty. According to the Amnesty International Report 2006, sixteen people have been executed in the Bahamas since 1973. The last execution in the Bahamas took place in January 2000. Also, they reported that twenty five prisoners remained on death row at the end of 2000. Bahamas practiced mandatory sentences for convicted murders. However, on 8th of March 2006, the Judicial Committee of the Privy Court (JCPC), the highest court of appeal for countries in the English-speaking Caribbean region, abolished the mandatory death sentence. They ruled that the mandatory death sentence is in violation of the Bahamian Constitution.

PRISON SYSTEMS

Structure. In Bahamas there is only one prison, called Her Majesty’s Prison Fox Hill, which consists of a large maximum-security unit (holding 700 people), a “remand” (pretrial) facility, and medium minimum security facilities. Fox Hill includes pretrial and sentenced prisoners. Due to overcrowding in the remand facility, many pretrial detainees are mixed with convicted prisoners. However, in 2005, according to the 2006 U.S. State Dept. report, “new prisoners were no longer automatically placed in maximum security, but were processed through an intake center and assigned cells based upon an analysis of risk factors and space availability.”

Again according to the U.S. State Department, attorneys and other prisoner advocates continued to complain of excessive pretrial detention. The constitution mandates that suspects can be held for a “reasonable period of time” before trial. Suspects commonly were held two to four years before they received a trial. In October a government report stated that 645 of the 1500 prisoners at Fox Hill were awaiting trial. Prison officials estimated that approximately 100 pretrial prisoners had been on remand for over 2 years.

In addition to the Fox Hill prison, the Carmichael Road Immigrant Detention Center holds up to 500 detainees (with tent space for an additional 500), and women and men were housed

separately. Haitians and Cubans were the most commonly interdicted migrants. The highest occupancy during the year was approximately 700, with an additional 250 at a temporary holding facility on the island of Great Inagua. Detainees complained that non-English speaking migrants were sometimes unable to communicate with guards regarding basic needs and detention center rules. Detainees also continued to complain of abuse by guards. Human rights groups expressed concern that complaint investigations were handled internally without independent review and oversight.

Standards. There are no statutory standards, but the government has been engaged in a high-profile effort to improve conditions at Fox Hill, after several reported deaths and other problems. The government appointed the chairman of the Prison Reform Commission as prison superintendent. There were improvements in prisoner intake, cell assignments, and educational opportunities for prisoners. Inmates reported continued improvement in food service operations due to a professional staff overseeing the inmate cooking staff; however, some unsanitary conditions in food preparation remained.

BEHAVIOR and PROTECTION of INCARCERATED PERSONS

Grievances. It is unclear whether prisoners can make complaints to the prison authorities, although there are references to “complaints from prisoners” from human rights investigators.

Prisoner Abuse. The law prohibits torture, but according to Amnesty International (2003), human rights monitors and members of the public expressed concern over continued instances of police abuse of criminal suspects. Police officials, while denying systematic or chronic abuses, acknowledged that police on occasion abused their authority.

Amnesty reports that corporal punishment is a lawful sentence for males in Bahamas. The punishment may be imposed by the courts following conviction for a wide range of criminal offences. The Criminal Law (Measures) Act 1991 provides that any male convicted of certain offences may be ordered by the courts to undergo corporal punishment in addition to any other punishment for various offenses. The offenses are causing wound, garroting, rape, robbery armed with an offensive weapon, stealing in certain cases on second or subsequent conviction, housebreaking and burglary. Amnesty International reports that an adult male may be flogged with a maximum of 24 strokes of the cat or rod or by up to 12 strokes of whipping. Male children may be whipped with a light cane but not flogged.

According to the U.S. State Department’s Country Reports on Human Rights Practices, it is reported the police occasionally beat and abuse suspects and prisoners. A recent (January 2006) report indicates that a prisoner was beaten to death by a guard in 2000, in a highly-publicized case.

Amnesty International reports that in the maximum security, cells had no natural light and prisoners were in near darkness- the only light source coming from small windows on the corridors opposite the cells. According to the UNHCR, most prisoners lacked beds, slept on concrete floors, and were locked in small cells 23 hours per day, often with human waste. Maximum-security inmates were allowed outside for exercise four days a week for one hour per day. Inmates complained of inadequate medical care and treatment.

As part of prison reform efforts, the prison adopted new use-of-force guidelines to address past concerns over prisoner treatment. Prison officials also established an internal affairs unit to investigate complaints against guards. According to prison officials, there were no allegations

of abuse by prison guards during the year. Organizations providing aid, counseling services, and religious instruction had regular access to inmates. In response to past concerns regarding prisoner abuse, prison officials adopted a policy on use of force, increased guard training, and used the new internal affairs unit to address complaints.

SERVICES for INCARCERATED PERSONS

Health Care. Amnesty International is concerned about the medical care for prisoners in the Bahamas. It says that the prisons fail to provide adequate medical care, and high rates of infectious diseases and other illnesses have been rising for many years. Also, it reports that prisoners suffering from AIDS, HIV or TB do not receive adequate medical care or drugs. Officially, 8 percent of the prison population has AIDS; Amnesty International reported in 2003 that the rate was likely closer to 20 percent.

Prisoners claim that it is impossible to see a doctor between 2 to 5 days after they request to the prison officers to see a doctor. A 2001 review of prison health care concluded that serious overcrowding increased health risks. It states that basic hygiene problems exist because of lack of running water and light, inadequate health care equipment, medication, and medical personnel, and under-utilization of recently constructed medical facilities.

Rehabilitation Programs. According to the Prison Reform Commission Report 2003, only 10% of prisoners were estimated to be in employment by the prison administration including approximately 40% of sentenced prisoners. Amnesty International reports that untried prisoners do not work and have no opportunity to work in the Bahamas. Some female prisoners claimed that they were given no opportunity to participate in work, educational or vocational programs.

Amnesty International says that overall the provision of exercise facilities to the inmate falls below that required by international standards. It says that female inmates claimed that they were provided with no exercise at all. It reports that prisoners in maximum, medium and minimum security normally were allowed to exercise outdoors for approximately one hour each day on Monday, Tuesday, Wednesday and Fridays. Amnesty International is concerned that the lack of exercise is particularly objectionable given that a high proportion of prisoners have no or few opportunities to engage in positive activities and mobility outside their cells.

Reentry Programs. The government significantly increased funding for improvements in prison facilities and prisoner rehabilitation programs. Prison officials continued to improve technical and vocational programs, opening the programs to women and increasing course offerings. Approximately 500 of the 900 eligible prisoners participated in training and work release programs.

RIGHTS of INCARCERATED PERSONS

Voting. According to Department of Political Science at Northwestern University, in Bahamas prisoners (1280) do not have the right to vote. However, there are no restrictions on voting rights after release.

Visitation. Amnesty reports that the Prison Rules permit visits every month for untried prisoners or every two months for convicted prisoners. However, in practice Amnesty International tells that this right is not consistently implemented. It says that prisoners in maximum security told Amnesty International that visitation privileges could be taken away for infringements of the prison rules. Amnesty International reports that despite the Prison Rules, which state that visits

shall last two hours, they typically last only half an hour. According to Amnesty International, inmates are allowed only non-contact visitation.

SOURCES:

<<http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.html?tbl=RSDCOI&id=441821a938>>

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<<http://www.sentencingproject.org/pdfs/Rottinghaus.pdf>>



Article 7.5 Any persons detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

American Convention on Human Rights, 1969.

Barbados



CRIMINAL JUSTICE

Indigents. Barbados provides free legal counsel to indigent defendants in very serious criminal cases, such as rape and murder.¹

The law permits detainees to be held without charge for up to one week; however, once charged, detainees must be brought before a court without unnecessary delay. There is a functioning bail system. Criminal detainees were given prompt access to counsel and were advised of that right immediately after arrest. Although access to family members generally was permitted, several families complained that they did not receive regular access in the weeks immediately following the prison fire (see **Structure** below).

Juveniles. Available information suggests 18 as the normal minimum age for the adult justice system, although in exceptional cases persons as young as 16 could be included.²

Death Penalty. Based on press reports citing actual death sentences and 4-6 persons currently under sentence of death (mid 2006), Barbados does have a death penalty for persons whose crimes were committed at age 18 or older, although no executions have apparently occurred since 1984.

PRISON SYSTEMS

Structure. Glendairy Prison, the nation's sole prison, was a 150-year-old structure designed to hold 350 prisoners that routinely held more than a thousand prisoners. In March, 2005, prisoners rioted and set fire to the prison, causing such severe damage that the government decided to abandon it permanently. All prisoners were moved to a temporary prison constructed at Harrison Point until a permanent prison could be built. Conditions at the temporary prison were inadequate. The temporary prison is an improvement over the former prison, with several buildings spread over 65 acres, compared with the 39-acre Glendairy. The temporary prison also had separate facilities for persons on remand awaiting trial as well as for female prisoners. In September the government announced that construction had begun on a new permanent prison. The Harrison Point facility held approximately 900 prisoners; the new facility, which will have a capacity of 1,200 prisoners, is due to be completed by January 2007.

However, of the roughly 1000 inmates in Barbados combined jail and prison system, nearly one-fourth (23%) are pretrial detainees.³

Standards. In May the press reported complaints by prisoners and their families about inadequate conditions at the temporary prison, including unsanitary cells, inedible food, and unclean drinking water.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Prisoner Abuse. Torture and other cruel, inhuman, or degrading treatment or punishment are specifically prohibited by law, but there were reports that police sometimes used excessive force. The majority of complaints against the police alleged unprofessional conduct and beating or assault. Police regularly were accused of beating suspects to obtain confessions, and suspects

often recanted their confessions during their trial. There were numerous cases where the only evidence against the accused was a confession.⁴

SERVICES FOR INCARCERATED PERSONS

Health Care. Family members complained that prison authorities had failed to inform them in a timely manner when prisoners had serious health problems that resulted in their being taken to the hospital.

RIGHTS OF INCARCERATED PERSONS

Voting. Barbados is not in the Rottinghaus list of countries that permit its prisoners (estimated at 850 in 2003) to vote.⁵

Visitation. The State Department and other news reports cite denial of visiting both for legal counsel and for family in the aftermath of the Glendairy prison fire and relocation of inmates to temporary facilities. Subsequently, family members further complained that they were denied the opportunity to visit their relatives in prison. While the government normally permitted prison visits by independent human rights monitors, no such visits were known to have taken place during the year at the Harrison Point facility.

SOURCES:

¹ <www.state.gov/drl/rls/hrrpt/2004/41748.htm> U.S. State Department.

² <<http://www.phaseloop.com/foreignprisoners/news-barbados03.html>> Foreign Prisoner Support Service.

³ Kings College, International Centre on Prison Studies, Prison Brief for Barbados, as of March 2005.

⁴ <<http://www.state.gov/g/drl/rls/hrrpt/2005/61715.htm>> U.S. Dept. of State, Country Reports on Human Rights.

⁵ <www.sentencingproject.org/pdfs/rottinghaus.pdf>



Article 6. Every person has the right to establish a family, the basic element of society, and to receive protection therefore.

American Declaration of the Rights and Duties of Man, 1948.

Belize

CRIMINAL JUSTICE

Indigents. The counsel for indigent people is provided by the state for those with capital crimes. In 1999 the government provided a public prosecutor, but the state department is constrained by a severe lack of trained personnel, public defenders and police officers.



Detainees usually were granted timely access to family members and lawyers, although there were occasional complaints that inmates were denied access or a phone call after arrest. Bail was available for all cases except killing and generally was granted. In cases involving narcotics, the law does not permit police to grant bail, but a magistrate's court may do so after a full hearing. Detainees sometimes could not afford bail; backlogs in the docket often caused considerable delays and postponement of hearings, resulting in an overcrowded prison and at times prolonged pretrial detention. By year's end approximately 23 percent of the prison population was in pretrial detention.

Juveniles. 18 is the age considered for an offender to be considered an adult. The minors are housed in the boot camp. Currently there are young male offenders between the ages of 14-31 living in the same area, and most of the older men are there as protectors. However, there are several other men over the age of 18 housed there, simply because there is nowhere else to put them. The boot camp is in close proximity to higher security areas.

The government does not incarcerate female juveniles charged or convicted of crimes, but rather places them in the care of the government social services authorities. During the year there were no female juveniles in the custody of the social services authorities. Juvenile male prisoners lived in a separate, newly built facility outside the main perimeter fence.

Death Penalty. Belize has the death penalty, and nine persons are on death row. Also, people can be sentenced to life without parole for capital offenses.

PRISON SYSTEMS

Structure. The nation of Belize has one correctional facility in the entire nation by the name of Hattieville prison, aside from a small number of detainees held in temporary cells at police stations. All prisoners are kept in the same facility, although there are different categories ranging from boot camp to maximum security. The death row inmates as well as the boot camp inmates live in the same facility. People with non-criminal convictions stay in the same facilities. There is no classification of people by class of offense. People are simply put wherever there is adequate room. The prison, in Hattieville, which was designed for 1,200 inmates, held approximately 1,300 adult male inmates, 28 female inmates, and 54 youth male inmates. In the remands section of the prison, 301 detainees shared forty 15x20 foot cells that were designed to hold 150 persons. The majority of prison accommodations do not have showers or toilets. The prison includes a separate facility for women, located about 200 yards outside the main compound. Conditions in the women's facility are significantly better than those in the much larger men's compound. The 30 women held there occupied 17 cells; each inmate has her own bed. The facility is clean, and inmates have access to limited educational classes and vocational classes in cosmetology.

The Youth Enhancement Agency (YEA) houses over 60 youths between the ages of 13 and 25, who participate in rehabilitation and job training programs.

Standards. According to the Prison Rules Act and the Belize Constitution there are sanitary conditions that should be met. However, following the survey of HRBC, many sanitary conditions were found to be poor. The health conditions are seriously compromised by the lack of sanitary installations. For example a bucket serves as a commode and up to seven inmates use that one-bucket, which is a breeding ground for many infectious diseases. In addition, there is a lack of proper medical care for inmates.

The situation in Hattieville is very bleak as that facility is under funded, severely overcrowded, the staff is completely under trained, and the inmates are treated very poorly. Inmates often report being treated badly, and a lack of food. They must have some outside income in order to maintain the most simple necessities such as a mattress, a pillow, a chair etc.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Hattieville does require inmates to behave in a certain matter. For improper conduct, the prisoner is to be temporarily confined in a special cell, the “punishment cell.” The officer on duty is responsible for defining what is disorderly conduct, and most of these officers are under trained. The punishment cell is 8 by 10 with no window and at the time of inspection there were five males in the punishment cell.

Prisoner Abuse. There are clear violations of accepted international standards, such as the use of corporal punishment, placing as many as five individuals in a room with no lighting, not allowing the prisoners to bathe, and at times using unnecessary force.

During the year there were reports that prison authorities brutalized troublesome prisoners, including placing inmates in a small, unlit, and unventilated punishment cells called “supermax.” Inmates claimed that prison officials sometimes withheld food and water as further punishment, conducted strip searches and beatings, and extorted money for transfers to better conditions. The Kolbe Foundation investigated reports of abuse or excessive force by prison officials. On May 9, the Kolbe Foundation, by means of an internal tribunal, dismissed three senior prison officers, including the chief of security, for alleged brutality and bribery. Matters of inmate-on-inmate abuse were directly turned over to police. Prisoners convicted or accused of certain serious crimes such as child molestation often were held in the remands section of the Hattieville prison for their protection.

Principal human rights abuses include occasional brutality and use of excessive force by the police when making arrests, poor prison conditions, allegations of arbitrary arrest and detention, lengthy pretrial detention, political influence on the judiciary, and judicial limits on freedom of the press.

SERVICES FOR INCARCERATED PERSONS

Health Care. In cases of extreme illness or serious injury, inmates are taken to the hospital in Belize City. However the inmates do not always receive the necessary medical attention, especially if an injury was caused by an officer’s abuse. Paramedics are available in the facility, but once again there is lack of adequate medical personnel, medication for the prisoners, and hardly any medical equipment.

The sewage systems seemed to back up and be clogged, leading to many health hazards. There was a lack of lighting and ventilation in many of the cells.

Rehabilitation Programs. As far as education goes, there is no library, just a handful of books shelved in the men's facility. Hattieville has developed a five step rehabilitative and educational program that is available to all inmates who have two years or less in their sentences. This program includes a life skills training program, as well as agriculture classes, computer programming classes and parenting skills classes. Inmates are allowed to work inside the facility; their jobs include carpentry, trade linen, kitchen duty and custodial work. The institution receives 69% of their pay and the inmate receives the rest.

During the year the Kolbe Foundation's efforts focused on rehabilitation, resulting in improvements in the prison system in the following areas: enhanced work-release opportunities; jobs skills training, including the establishment of a wood furniture and crafts workshop; a financial savings program for prisoners; and enhanced internal security that included supervised prisoners' access to cell phones for prisoners to report alleged abuses by guards. The government's Women's Department provided counseling and educational services for female inmates. By year's end the prison's youth facility had retained four full-time teachers and one full-time counselor.

Increasingly, youthful offenders are transferred from the main prison to the YEA youth facilities. Prison authorities provided training for inmates in basic skills trades such as carpentry and construction. During the year, the prison joined with the Fisheries Department to teach aquaculture to inmates. In addition to providing food and income for the prison, prison officials hope to train inmates for eventual work. A job-training program at a citrus farm employs 44 inmates.

Reentry Programs. Hattieville has a program for those who are being released on parole which includes job training, ethics, parole preparation, victims awareness and a re-entry program.

RIGHTS OF INCARCERATED PERSONS

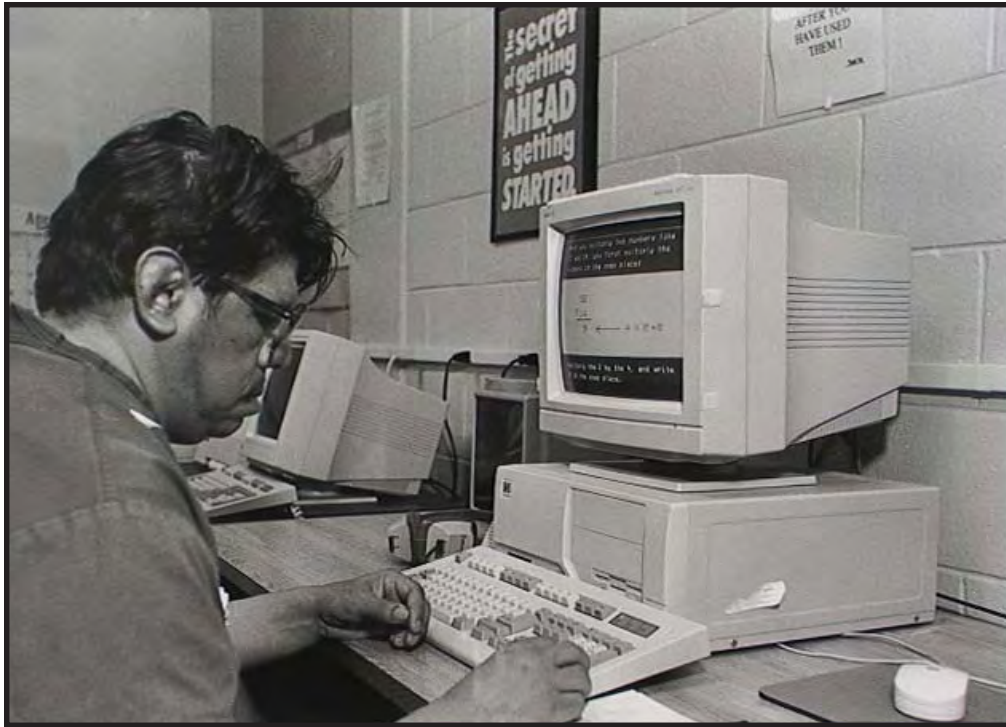
Voting. According to Rottinghaus, Belize does not allow its prisoners to vote if their sentences exceed one year.¹

Visitation. The government permitted prison visits by independent human rights observers, and such visits took place during the year.

SOURCES:

www.humanrightsstudies.org.bz/docs/PRISONHattievillePrisonerHRCBAugust2002.doc

¹ www.sentencingproject.org/pdfs/rottinghaus.pdf



Article 9. No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense, the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

American Convention on Human Rights, 1969

Bolivia

CRIMINAL JUSTICE



Indigents. The National Public Defense Service was begun in 1992. However, the number of drug-related arrests far surpasses the limited number that the public defenders can handle, especially in rural areas. Also, the treatment of detainees by the Bolivian judicial system is determined by their economic status. Nothing happens unless the prisoner has money. Prisoners were allowed access to a lawyer, but approximately 70 percent could not afford legal counsel, and public defenders were overburdened.

Juveniles. Juvenile detainees 16 to 21 years of age are not segregated from adults in prisons. Abuse of juveniles in prison is common. The 706 convicted juvenile (16 to 21 years old) prisoners were not segregated from adult prisoners in jails, and adult inmates sometimes abused them. Rehabilitation programs for juveniles or other prisoners were scarce to nonexistent. Pretrial detainees were held with convicted prisoners.

Children from 11 to 16 years of age may be detained indefinitely in children's centers for known or suspected offenses, or for their protection, on the orders of a social worker. There is no judicial review of such orders.

Death Penalty. The Bolivian Constitution, Article 17, bars the death penalty. Under Article 17, the penalty for murder, patricide, and treason is a 30-year jail term. The last execution in Bolivia was in 1974.

Although there may be no sentence of Life Without Parole, the possibility that the accused without money may receive excessive prison sentences is a real concern. The crime of drug trafficking, for example is punishable by a 25-year maximum sentence plus *días multa*. *Días multa* that is a fine, which if unpaid, means 20,000 more days of imprisonment or 54 additional years. The sad result often turns out to be a sentence of Life ... without parole.

PRISON SYSTEMS

Structure. Prisons in Bolivia are under the direction of the Ministry of Interior and Police. The prison administration is titled *Dirección Nacional de Régimen Penitenciario y Supervisión*. The total prison population was 7,710 in November of 2005. Of this number, 75% were pre-trial prisoners, who were kept in the same prisons as those sentenced. 7% were women. 4.3% were juveniles and 3.3% were foreigners. There are at least two women's prisons. Hundreds of children live with their parents in prison as the government considers it more humane to support them there rather than to leave them homeless. Although only children up to 6 years old are supposed to live with an incarcerated parent, children as old as age 12 live with their fathers in San Pedro prison. Prison conditions are extremely primitive.

Standards. The National Police have primary responsibility for internal security, but military forces are called upon in critical situations. Prison conditions are harsh. Prisons are overcrowded

and in poor condition. Overpopulated jails included: San Pedro in La Paz by 397 percent, Mocovi by 345 percent, and the women's jail in La Paz by 300 percent. With the exception of the maximum-security prison of Chonchocoro in El Alto, government authorities effectively controlled only the outer security perimeter of each prison. Inside prison walls, prisoners usually maintained control, and criminal gangs operated from their cells without hindrance.

A prisoner's wealth may determine cell size, visiting privileges, day-pass eligibility, and place or length of confinement. Fees reportedly were paid to prior cell occupants or to prisoners who controlled cellblocks. Although the law permits children up to 6 years old to live with an incarcerated parent, children as old as 12 lived with their parents in prisons. There were approximately 730 children living with a parent in prison, as an alternative to being left homeless. The standard prison diet was insufficient, and prisoners who could afford to do so supplemented the standard prison diet by buying food.

There are separate prisons for women, except for Morros Blancos prison in Tarija, where both men and women were incarcerated. Conditions for female inmates were similar to those for men; however, overcrowding at the San Sebastian women's prison in Cochabamba was worse than in most prisons for men.

The CCP also recognizes the conflict resolution (community justice) traditions of indigenous communities, provided that the resolution does not conflict with the rights and guarantees established under the constitution.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Prison rules originate from the CCP— Code of Criminal Procedure. Enforcement is a serious problem because the prisoners are usually in control. As an example of policy failure, the CCP provides that a detainee cannot be held for longer than 18 months awaiting trial. This policy has not been respected in practice due to judicial corruption, a shortage of public defenders, and complex criminal justice procedures.

Prisoner Abuse. Prison officials effectively control only the outer security perimeter of each prison. Inside, prisoners maintain control and criminal gangs operate from their cells without hindrance. Violence between prisoners, and sometimes involving officials, are problems. Corruption is a problem among guards and wardens.

Violence between prisoners and, in some cases, the involvement of prison officials in violence against prisoners were problems. In October more than 200 prisoners in the Cantumarca prison in Potosi rioted after guards beat a prisoner. Corruption was a problem among low-ranking and poorly paid guards and prison wardens. The number of persons held in detention centers, intended to hold persons prior to the completion of their trials and sentencing, significantly decreased due to the new Code of Criminal Procedure (CCP) but was still a problem due to judiciary strikes and a general increase in crime.

SERVICES FOR INCARCERATED PERSONS

Health Care. A major problem, in addition to insufficient food and overcrowding, is the lack of medical services. To begin with, there is a lack of sanitation and hygienic facilities. Another big health problem is drug and alcohol abuse. Prisoners with money can get permission for outside medical treatment.

The law provides that prisoners have access to medical assistance, but there was no adequate health care within the prisons, and it was difficult for prisoners to get permission for outside medical treatment. Of the country's 14 jails, 5 did not have doctors or provide medical assistance. Several illnesses were registered in the jails such as tuberculosis and HIV. The government was unaware of the number of ill prisoners. However, affluent prisoners could obtain transfers to preferred prisons or even to outside private institutional care for "medical" reasons. Inmates who could pay had access to drugs and alcohol.

Rehabilitation Programs. Reports agree that rehabilitation programs—work, education, and recreation—are scarce to nonexistent. The government is aware of the need for such programs, but does not budget sufficient resources to provide them.

Reentry Programs. No information was found about a formal pre-release or re-entry assistance program.

RIGHTS OF INCARCERATED PERSONS

Voting. Bolivia is not in the Rottinghaus list of countries that permit its prisoners to vote.¹

Visitation. A prisoner's wealth determines his/her visiting privileges, as well as cell size, day-pass eligibility, and place or length of confinement. The government permitted prison visits by independent human rights observers, judges, and media representatives, and such visits took place during the year.

SOURCES:

¹ www.sentencingproject.org/pdfs/rottinghaus.pdf



Article 7. All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

American Declaration of the Rights and Duties of Man, 1948.

Brazil



CRIMINAL JUSTICE

Indigents. The federal justice system has a public defender's office. As for the state level (where most defendants answer for their crimes), every state but one has currently passed a law to implement a public defender's office. In the state of São Paulo, this just became law at the end of 2005, so it is clearly still in process.

Legal assistance is available for all who cannot pay for a lawyer. In criminal cases, the lawyer only steps in at the moment of the first hearing (and this is only since 2003; before 2003, the lawyer often was assigned after the first hearing). Generally, the only contact the prisoner has with his/her lawyer is at the hearing; there is no contact otherwise. Although the Public Defender's office is new in many states, there was previously a contract between the state and the Procuradoria Geral to provide free defense for those who needed it. Because the lawyer has limited contact with his/her client, he/she generally does the minimum necessary to defend the client — a formal defense, without going after every resource available.

Juveniles. Young people cannot be tried in the adult system until the age of 18. Adolescents are kept separate from adults. The system that administers the program for adolescent offenders is run by an entirely different administration.

Death Penalty. There is no death penalty in Brazil. The sentence of life without parole does not exist in Brazilian law. There are situations where a sentence could be considered a life sentence, however. No one is required to complete more than 30 years in prison (at one time) — even if his/her sentence is 100 years, he/she is released after 30 years. It is only life without parole if a person happens to be older when arrested; for instance, if he is already 55 or 60 years old when sentenced and must serve the maximum of 30 years.

PRISON SYSTEMS

Structure. Brazil does not have a federal prison system. All prisons are run by the different states in the country — so there are 27 prison systems. Federal prisoners are kept in these state prisons, and the state courts are responsible for carrying out the sentences.

Brazil is currently in the process of building 5 federal prisons, but they are not specifically for offenders convicted of federal crimes. Instead, they will be used as extra-maximum security for highly dangerous inmates — dangerous either because of their connection to drug-trafficking and organized crime or because of repeated participation in prison riots, etc.

According to the Ministry of Justice's National Prison Department (Departamento Penitenciário Nacional or DEPEN), there were 361,402 people deprived of their liberty in December, 2005 (including 7873 people who actually are in an "open regime" meaning that they might be at home, reporting regularly to the judge) — between the state prison system and the state jail

system. Among these, 20,264 were women. Thus women make up about 5.6% of the total prison population. It is important to note that the Ministry of Justice compiles these statistics through the reporting of each state. So, if a state reports inaccurate data, the Ministry of Justice's data will reflect this inaccuracy.

By law, sentenced and non-sentenced inmates should be kept in separate facilities. However, the government reports a deficit of over 100,000 spaces for inmates (due to overpopulation), and therefore, many inmates complete their sentences in simple jail facilities with no access to health care, state lawyers, social workers, etc. In 2003, an estimated 25% of sentenced prisoners were being held in police lock-ups which is illegal. Brazilian law restricts use of lock-ups to holding prisoners while they are giving testimony, being screened, and having their fingerprints taken. Some states have more than 50% of their prisoners held by the police – 80% in the state of Minas Gerais.

Standards. There is one single Penal Law for the whole country and one Penal Execution Law which states very clearly how prisons should be run, what the rights and duties of the prisoners are, and which are the institutions that have responsibility for various aspects of the prison system. At this point, only three or so states actually have state prison laws. São Paulo, for instance, has administrative norms that regulate prison units. Thus, it is the executive branch of the government that decides these norms.

Unfortunately, the Constitution, the Penal Execution Law, and all international treaties dealing with the rights of prisoners are systematically ignored. Brazilian prisons, as a rule, are inhumane and degrading. High levels of overcrowding, violence, and corruption are widespread.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. The Federal Law for Penal Execution defines not only the norms and regulations for the prison system, but also the rights and responsibilities for inmates. There are disciplinary norms. These are often not written but are verbal, thus making uniformity in the application of disciplinary sanctions almost impossible. Each prison unit has their rules (within legal limits).

The State systems generally have a type of Ombudsman and a department and/or judge that investigate any accusation or allegation of abuse of inmates, as well as accompanying prison riots. Unfortunately, because of the cumbersome structure of the state, responses are often inadequate and/or very delayed.

Prisoner Abuse. Corporal punishment, torture, dark cells, or any other cruel, unusual or degrading treatment are prohibited by law, and can be reported to the department that investigates any type of abuse by police or prison officials. Unfortunately, abuses are far from infrequent! Human rights organizations are consistently receiving letters and complaints about torture and other abuses.

From the moment of arrest until their release from prison, Brazilian inmates face chronic and sometimes extreme official violence. In the immediate aftermath of prison riots, in particular, inmates frequently suffer appalling physical abuse. Poorly remunerated and lacking appropriate training, prison guards are often quick to resort to physical beatings in lieu of the authorized punishments listed in the national prison law.

What most encourages these acts of violence is the persistent impunity that prevails for officials guilty of them. At every stage of the criminal process – from investigation to prosecution to

judgment to appeal – the scales are heavily weighted in favor of the perpetrator of abuse. Indeed, very few incidents of physical abuse of prisoners, including even the most egregious cases of torture, are ever investigated. The unpopularity and political powerlessness of the inmate population means that few people care if abuses against prisoners go unpunished.

SERVICES FOR INCARCERATED PERSONS

Health Care. The prisons do not provide adequate health care for prisoners. Some prisons have no doctors; some do not have enough doctors and/or nurses. Some doctors rarely show up to work. (For example, one prison had a doctor contracted to work 20 hours a week, and even the staff said that if he showed up an hour a day it was a good day!) Prenatal care is almost nonexistent. Treatment is delayed; there's always a shortage of medicine. A campaign has been started for the prisoners to receive the vaccinations that are given free to the general public. The federal government is trying to set up agreements with the states to release money for health services.

Any medical appointment outside of the prison facility must be scheduled far in advance. Then there must be transportation available on the day of the appointment, as well as the police to provide escort to the hospital. Sometimes the pieces all come together, but they arrive late at the hospital and the appointment is canceled. Sometimes the inmates complain that they are actually picked up for their appointment, driven around for a few hours and taken back without ever having left the prison vehicle, much less having seen a doctor.

It is often said that what most often motivates prison riots is a lack of adequate health care and lack of adequate legal assistance.

Rehabilitation Programs. Some prisons do have work, education and recreation programs, but public jails (which house almost 70,000 of the total prison population) rarely have any services beyond detention. They do not have courses or education (nor do they have space for it). They also lack recreation programs or any type of social or psychological outlet. There are jails with some work opportunities, or with some kind of provision for the inmates to crochet or do art/craft type work that they can then sell through their families later.

The prison system now operates some pretrial detention facilities. These also do not have work, education or recreational facilities.

Based on the national Law for Penal Execution, the state prisons are required to have work opportunities and medical facilities, as well as psychological, social and legal resources. Some are more successful than others. The law also provides for one day to be taken off the sentence for each day of work, and some judges will grant the same benefit for education although this is not yet included in the law.

The situation of women is very worrisome. Women are still a small percentage of the total population, and they are therefore ignored by the system. No new facilities are built for women.

Although women make up only 5-6% of the incarcerated population, foreign women make up almost 20% of the foreigners imprisoned in Brazil. Women are 26% of those incarcerated in public jails in the state of São Paulo. When new facilities are opened, they are often old jails or men's prisons that are "renovated" with fresh paint. A large percentage of women are completing their entire sentence in pretrial facilities, with no access to necessary resources that would be provided in a prison. This includes work especially.

According to an official survey done in the system, a high percentage of women actually send some of the money they earn home to help support their families while men rarely do this. So it is essential for work to be available to the women.

In addition, about 50% of women are in prison for drug-trafficking and thus subject to longer sentences and fewer opportunities. The laws are more rigid for certain crimes like drug-trafficking, homicide, rape, etc.

Reentry Programs. Programs for pre-release or re-entry assistance for prisoners practically don't exist. The system provides for a step-up program for many crimes which makes it possible for a person to go from a totally "closed" prison regime to a "semi-open" one (where he/she can work outside the prison during the day and return at night and on weekends, with an occasional weekend off), and then finally to an "open" prison where he or she can actually be at home while completing the sentence.

However, only one program is known to work specifically with inmates in preparation for their release. In São Paulo, the state prison system has an office for recently released inmates, but it is extremely inadequate and deficient. They often refer recently released people to the Churches that offer social services. Thus, the State passes off its responsibility to civil society and charitable organizations.

RIGHTS OF INCARCERATED PERSONS

Voting. In general, people in jails or prisons are not able to vote. Pre-trial or unsentenced inmates have the right to vote, but there are few states that actually make this possible. DEPEN took a survey of the states in 2005 asking about the provisions they had made for prisoners awaiting judgment (76,000 men and 2,518 women in 2004) to vote. Most of the 16 states that responded to the survey gave various reasons why they found it impractical to allow these prisoners to vote. On the other hand, six states affirm the right of those who are eligible to vote.

Through the federal constitution, anyone with a final sentence (after finishing the appeal process) loses his/her right to vote. His/her political rights are suspended while in prison/jail. The sentence generally is both a prison sentence and a fine. A person cannot regain his/her right to vote until he/she has paid the fine. Then he/she can go to the electoral board and solicit the right to vote again. In Brazil, voting is obligatory, and if one cannot prove that one voted in the latest election (or that one is justified in why he/she did not vote) then he/she cannot look for a job or cannot enroll in a school. There is a constitutional amendment in Congress to allow convicted prisoners to vote.

Visitation. Prison facilities are not built with families and visits in mind. Depending on the facility, the visits occur in an open patio in the middle of the prison or in the actual cells of the inmates. Because the visitors have access to the inside and to the cells, the visitors are searched before entering the prison. Each visitor, often even children, must remove all of his/her clothing and often must squat down, (sometimes over a mirror for women) at least three times, to show that he/she is not trying to hide drugs or cell phones in any body cavities. It is extremely humiliating. We have seen 90-year-old visitors and children who have had to pass through this. It is very hard on the visitor and on the inmate who knows that his/her family suffers in order to come in.

At some jails and prisons, family members actually arrive the night before in order to hold their place in line because the end of the line is often delayed for hours before entering. In general,

visitors can stay most of the day on visiting day. In the state of São Paulo, the current political pressure is to build prisons outside of major cities, and so inmates can visit up to 10 hours or more with their families. The state does not provide any transportation, and the family member ends up having to pay bus fare as well as meals for the weekend.

Intimate or conjugal visits do happen – the conditions depend much on the facility. Women’s prisons have only instituted conjugal visits in the last 4 years, and they generally have rooms specifically for this purpose. Men’s prisons generally have intimate visits in the cells. They have to work out a way to do this while providing a minimum of discretion or decency, seeing as all cells are shared cells – some extremely overcrowded.



Article 11. Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

American Declaration of the Rights and Duties of Man, 1948.

Canada

CRIMINAL JUSTICE

Indigents. Each of the provinces runs its own legal aid organization which is funded, in part, by the federal government. The original arrangement with the provinces called for the federal government to assume approximately half of the costs of providing legal aid for indigent defendants who were facing charges that would likely result in incarceration. Current funding levels from the federal government are set at \$126.5 million. Provision of legal assistance is generally provided through legal aid clinics or individual attorneys who are remunerated on a contract basis.



The Canadian Bar Association (CBA) argues that the current model of providing legal assistance to indigent defendants is ineffective, and cites four primary failures. First, inadequate funding has resulted in significant numbers of people being denied access to legal aid. The bar association also contends that the widespread knowledge of underfunding of legal aid programs prevents countless other persons from even applying, while resigning themselves to the fact that their application will be denied. Second, there are provincial disparities in legal aid coverage, leading to unequal provision across the country. Third, the legal aid system is structured in such a way that assistance may only be available for certain legal issues. Thus, a defendant facing a complex proceeding may only be eligible for partial coverage. Finally, by the nature of the population served, the dysfunctional elements of the legal aid system are borne largely by the most vulnerable populations – low income, communities of color, women, and the Aboriginal population.

The CBA has called for increased funding, a standardized set of requirements for legal aid provision that are uniform across all provinces, and federal legislation addressing necessary legal services. The Canadian Charter of Rights and Freedoms has added an additional avenue in which to challenge the current state of the public provision of defence counsel. According to a report released by the CBA: “With respect to section 11 of the Charter, a number of cases have now established that in matters of sufficient seriousness and complexity, the ‘accused cannot receive a fair trial without counsel.’ However, it is clear that the Supreme Court of Canada will not dictate to the provinces and territories how they should deliver legal aid services and which delivery models should be established.”

According to the Correctional Service of Canada’s Inmates’ Access to Legal Assistance and the Police, “inmates shall be provided with information regarding the availability of legal aid services upon request.” “Should legal aid be unavailable or should the inmate choose not to make use of this service, legal fees will be paid by the inmate” (s.18). Knowledge about legal advice and access varies by institution but is generally not as well known as would be desired. Some penitentiaries include information about access in their inmates’ handbooks but others do not.

Juveniles. At age 12 a young person can be charged with a criminal offence under the Youth Criminal Justice Act (YCJA, s.2(1)); at age 14 a young person can be transferred to adult court for prosecution of a criminal offence (YCJA, s.62); and at age 18 a person is considered an adult under the Criminal Code of Canada (CCC) and no longer a “young person” under YCJA,

s.2(1). According to s.30(3) of the Youth Criminal Justice Act, prior to sentencing, a young person “shall be held separate and apart from any adult who is detained or held in custody” barring certain exceptional circumstances such as no available space in a youth facility. The YCJA sets out the rules and regulations under which the youth justice system shall operate including all young persons under the age of 18 serving a youth sentence in youth custody. There are provisions in the legislation governing placement in an adult facility or transfer to one for those 18 and over [paragraphs 76(1)(b) and (c) (placement in adult facilities with adult sentence) and sections 89 to 93 (placement in adult facilities with youth sentence)].

Death Penalty. They do not have a death penalty. The last execution was carried out on December 11, 1962 when 2 men were hanged in Toronto, Ontario. Canada abandoned capital punishment in 1964 and commuted all death sentences to life imprisonment. In 1976 the death penalty was removed from the Criminal Code of Canada and replaced by life imprisonment with no consideration of parole for 10 to 25 years. Canada retained the death penalty for a number of military offences, including treason and mutiny, although no Canadian soldier was charged with or executed for a capital crime in over 50 years. On December 10, 1998, the last vestiges of the death penalty in Canada were abolished with the passage of legislation removing all references to capital punishment from the National Defence Act.

A sentence may carry no consideration of parole for 10 to 25 years. However, after the abolition of capital punishment in 1976, Parliament created (s.745) a judicial review option in the Canadian Criminal Code often called the faint-hope clause. This provision allows murderers serving a life sentence with no eligibility for parole to apply for judicial review after having served 15 years of their sentence. The only exception is the Dangerous Offender provision contained in Section 753(4) of the CCC. If the court finds an offender to be a dangerous offender, it shall impose a sentence of detention in a penitentiary for an indeterminate period.

PRISON SYSTEMS

Structure. In Canada, responsibility for corrections is divided between the federal and provincial governments. The Correctional Service of Canada is responsible for offenders serving sentences of two years or longer (including life sentences). The provinces are responsible for offenders sentenced to terms of less than two years. Canada has a separate federal and provincial prison system. As of 2004, there were 170 institutions in the country – 54 federal and 116 provincial/territorial. As of mid-year 2004, there were 34,096 persons in Canadian correctional custody. This includes 12,641 adult federal prisoners, 19,366 adult provincial/territorial prisoners, and 2,089 juveniles. Thirty percent of these prisoners are pre-trial detainees.

Standards. There are multiple sections of the Corrections and Conditional Release Act that address minimum standards that must be upheld in a correctional institution. These include living conditions (s. 70), “The service shall take all reasonable steps to ensure that penitentiaries, the penitentiary environment, the living and working conditions of inmates, and the working conditions of staff members are safe, healthful and free of practices that undermine a person’s sense of personal dignity,” the circumstances during which different types of staff are permitted to conduct searches without suspicion (s.46-67), and criteria controlling disciplinary infractions (s.38-45). Any member of the House of Commons, Senator, or judge in Canada is permitted to enter any penitentiary, visit all sections of that penitentiary, and meet with any inmates (with his/her consent), barring any exceptional security-related restrictions (s.72). Canada employs a Correctional Investigator, who is appointed to a five-year term and can conduct investigations into complaints in federal prisons. These investigations can come at the behest of a person in prison, the Minister, or his/her own discretion.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Prison rules are enforced by a disciplinary system, according to s. 38-44 of the Corrections and Conditional Release Act the purpose of which is to “encourage inmates to conduct themselves in a manner that promotes the good order of the penitentiary, through a process that contributes to the inmates’ rehabilitation and successful reintegration into the community (s. 38). Prisoners can make complaints to the Office of the Correctional Investigator, an independent entity whose primary function is to investigate and bring resolution to individual offender complaints.

Independent Chairpersons (ICPs) were first appointed in 1977 to adjudicate disciplinary proceedings in response to the recommendations of the MacGuigan Report, a Parliamentary inquiry into the Penitentiary Service of Canada. The MacGuigan Report criticized the Warden’s Court system of adjudicating disciplinary matters, in which wardens and their delegates made decisions, as lacking both independence and impartiality. Additionally, disciplinary hearings were also denounced for failing to comply with procedural rules and fairness. In response, it was recommended that independent persons external to the institution be appointed to uphold the appearance of justice and to ensure that disciplinary hearings were fair and equitable.

Prisoner Abuse. Historically, Canadian offenders were subject to corporal punishment inflicted by various methods including the strap, whipping with the cat-o’-nine-tails, water hose, bread-and-water diet, paddling, and flogging. The abolition of corporal punishment came about in 1972 as an option of judicial sentencing under the Canadian Criminal Code and as an institutional punishment measure.

Part VIII of the CCC, Offences Against the Person and Reputation states that every official, or every person acting at the instigation of or with the consent or acquiescence of an official (including a peace officer, a public officer, a member of the Canadian Forces, or any person who may exercise powers, pursuant to a law in force in a foreign state) who inflicts torture on any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years (s.269.1 (1)).

Although some correctional facilities such as Kingston penitentiary used ill-treatment methods with their prisoners such as the use of dark cells, this practice ceased somewhere in the later part of the 19th century. Watchdog groups such as Human Rights Watch and Amnesty International act as external checks on the use of torture and other treatment of prisoners they regard as cruel.

SERVICES FOR INCARCERATED PERSONS

Health Care. Section 85-89 of the Corrections and Conditional Release Act (CCRA) spells out the health care responsibilities of the prison system. Canadian prisons are required to provide “essential health care” and “reasonable access to non-essential mental health care that will contribute to the inmate’s rehabilitation and successful reintegration into the community” (CCRA s.86-1(a-b)). However, the Correctional Investigators Report has noted that conditions for women prisoners in Canada is below par with particular emphasis on a lack of access to health care (long waiting lists to see a physician or specialist), the quality of the health care provided by the institution, medical decisions that were made by the institution, and a lack of appropriate mental health services.

Rehabilitation Programs. The Correctional Service of Canada (CSC) provides education programs at minimum, medium, and maximum-security institutions for Adult Basic Education (Grades 1 to 10), Secondary Education (Grade 12), Vocational Education, and Post-secondary

Education. Post-secondary education offers offenders the opportunity to acquire a trade or profession, as well as to update trade qualifications prior to their release. Offenders generally pay for their own post-secondary studies, unless it can be demonstrated that the education addresses a very specific need.

According to Griffiths and Cunningham (2000), “In 1980, the federal government created CORCAN Corporation, which has as its primary mandate the production and marketing of prison-made goods. The objective of CORCAN is to provide offenders with training and work experiences in an institutional setting which they can transfer to the private sector in the outside community. Under provisions of the CCRA, goods and services produced by inmates can be sold only to federal, provincial and municipal governments or to charitable, religious and non-profit organizations” (Excerpt from Canadian Corrections, p. 279). All correctional work programs call for group interaction through which offenders learn and practice skills that they will need to draw upon to facilitate reintegration and to adapt to private sector work settings. These important skills are central to the core employability program CSC intended to develop and implement. More specifically, they include problem solving, critical thinking, punctuality, interacting with coworkers, being respectful of other people’s opinions and feelings, and dealing with authority figures. Offenders who work while in an institution may earn between \$5.25 and \$6.90 daily, depending on their performance.

Within the CSC, recreation officers at each prison are responsible for the development, implementation, instruction and supervision of a variety of recreation programs.

Re-entry Programs. They do have programs for pre-release or re-entry assistance for prisoners. However, they are voluntary sector organizations and First Nations communities. These include but are not limited to the Canadian Association of Elizabeth Fry Societies, John Howard Society of Canada, L’Association des Services de Réhabilitation sociale du Québec, Salvation Army Correctional and Justice Services, St. Leonard’s Society of Canada, LINC (Long Term Offenders in the Community), and LifeLine (Lifers Helping Lifers)

RIGHTS OF INCARCERATED PERSONS

Voting. In the case of *Sauve v. Canada* in 2002, the Canadian Supreme Court overturned a prior prohibition on persons in prison serving a sentence of two years or more, from voting in federal elections. The Court ruled that to disenfranchise these persons in prison rendered the government no longer representative of its citizenry, thereby weakening fundamental democratic principles. The Court noted that to deny “penitentiary inmates (i.e., federal) the right to vote is more likely to send messages that undermine respect for the law and democracy than messages that enhance those values.” Section 3 of the Canadian Charter of Rights and Freedoms states that “every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.” The Court held that a ban on voting for persons in prison was in conflict with the Charter, and that the government “failed to identify particular problems that require denying the right to vote.” Prisoners vote inside the prison at advance polls.

Provincial inmates (incarcerated individuals serving sentences of two years or less) have the right to vote in federal elections under the Canada Elections Act. The right to vote in provincial elections varies by province. Three Canadian provinces and territories, New Brunswick, Nova Scotia and the Yukon Territory, have elected to completely ban inmate voting. In Alberta, the government has passed amendments to The Election Act that grant voting rights only to those inmates serving less than 10 days, serving for fine default, or convicted but not sentenced.

Voting rights are reinstated to all prisoners, regardless of time served, nature of the crime, etc. once released from prison/jail.

Visitation. Section 59,60,71 of the Corrections and Conditional Release Act spell out the correctional system's rules regarding visiting arrangements. The objective of the "private family visit program" is to "encourage offenders to develop and maintain family and community ties in preparation for their return to the community and to lessen the negative impact of incarceration on family relationships." For those persons deemed eligible for a private family visit, they are generally allotted 72 hours, once every two months. All persons are eligible, except persons:- accepted as being currently at risk of becoming involved in family violence; in receipt of unescorted temporary absences for family conduct; or in a special handling unit, or are awaiting decision, or have been approved for transfer to a special handling unit.

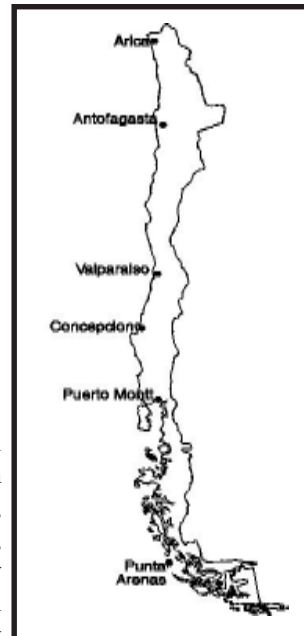
Family and Corrections Network (FCN) is an organization for and about families of prisoners that offers information, training and technical assistance on children of prisoners, parenting programs for prisoners, prison visiting, incarcerated fathers and mothers, hospitality programs, keeping in touch, returning to the community, the impact of the justice system on families, and prison marriage. Staff and volunteers provide information, counselling, some transportation, assistance and support to prison visitors of prisoners, ex-offenders and others in conflict or potential conflict with the law. Short term accommodation is provided for families and friends visiting inmates at Federal institutions or relocating to the area.



Article 5.6 Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

American Convention on Human Rights, 1969.

Chile



CRIMINAL JUSTICE

Indigents. An office of Public Defender provides professional legal counsel to anyone seeking such assistance. The Constitution provides for the right to legal counsel, but indigent defendants, who account for the majority of the cases in the Santiago region, did not always receive effective legal representation. They usually were represented by someone from the Government's legal assistance corporation, who was sometimes a law student finishing studies under the supervision of one of the corporation's lawyers. Defendants have a right of appeal. The judicial reform law establishes a presumption of innocence, which the old system does not explicitly provide.¹

Juveniles. Young people are considered adults for the purposes of the criminal justice system at age 18. The law requires that juvenile offenders (those under the age of 18) be held separately from adult prisoners.

A Diego Portales University study reported that, in May, the Gendarmeria moved juvenile offenders from the South Santiago prison for men to a reserved section of the Santiago women's prison, and two new juvenile detention centers were opened.²

Death Penalty. They do have a death penalty, but not for ordinary crimes (defined by Amnesty International as "abolitionist for ordinary crimes.") The death penalty is retained in the Code of Military Justice for crimes committed in time of war. There have been no executions since 1985. All death row inmates since had sentences commuted to life in prison by Presidential Decree.¹

They do not have sentences of life without the possibility of parole. The most serious felons are eligible for parole after 2/3 of their time has been served. The rest are eligible after half of their time has been served.¹

PRISON SYSTEMS

Structure. There is only a single national prison system. Prisons often were overcrowded and antiquated, with sub-standard sanitary conditions. According to the Ministry of Justice, there were approximately 37,000 prisoners in prisons designed to hold 23,025 inmates.²

Standards. Constitutional provisions were enacted after the fall of the Pinochet government. These included anti-torture provisions and other similar measures. The Chilean Ministry of Justice oversees the prison system.²

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Each prison has written rules and regulations governing prisoner behavior. The Chilean prison guard service, the Gendarmería de Chile, oversees the prisoners in the system. “Within the prison guard service there is no transparent and effective internal control system to verify, investigate and punish behavior that violates inmates’ basic rights, despite the procedures laid out in prison Regulations. The due processing of petitions is the responsibility of each prison governor. However, in some prisons the governor never becomes aware of the complaints presented or against whom they were presented. Some comply with the formality of having a book to register complaints but in practice nothing happens with those complaints.”³

Prisoner Abuse. The Chilean constitution prohibits actions such as corporal punishment, torture, dark cells, or any other cruel, unusual or degrading treatment, but complaints from prisoners still surface. The Chilean statutory definition of torture was noted as a point of concern by Amnesty International.⁴

SERVICES FOR INCARCERATED PERSONS

Health Care. Food in prisons met minimal nutritional needs, and prisoners were able to supplement their diets by buying food. Those with sufficient funds often could “rent” space in a better wing of the prison.

In isolated instances, prisoners died due to lack of clear prison procedures and insufficient resources in the prisons. In March, in San Miguel Prison, Hernan Zuleta Sanchez experienced abdominal pains but did not receive timely or appropriate treatment, was placed in solitary confinement, and died early the following day from a burst hernia.

Rehabilitation Programs. Under the Criminal Code, all persons sentenced for periods between sixty-one days and five years are obligated to work. Prisoners are remunerated for their work on a rising scale as they progress through the penal system and are eligible for the benefits of social insurance on the same basis as those in voluntary employment. However, a percentage of prisoners’ earnings is deducted to cover their keep and the maintenance of the penal service and as a contribution toward the discharge of civil responsibility arising from their offenses. Work can be either directly for the state, on contract, or on lease. Examples of work for the state include manufacture of such items as road signs or automobile license plates, or public road construction and maintenance. Work on contract to private firms or individuals is still carried out within the penal institution, but with tools and materials supplied by the contractor. Work on lease differs inasmuch as the private contractor is responsible for the housing and maintenance of the prisoner in secure conditions. Prisoners may also undertake additional discretionary work of a gainful nature within certain limitations laid down by the prisons administration.

Reentry Programs. Chile is enacting significant justice system reforms that seem to be opening doors for more restorative elements. Problems with crime and lack of trust in the criminal justice system provoked both the government and civil society to seek new options and creative solutions when seeking justice. These include more emphasis on victim’s issues, the creation of community mechanisms for dealing with conflict, and the introduction of mediation projects into schools.⁵

RIGHTS OF INCARCERATED PERSONS

Voting. Chilean felons, along with those on trial for felonies, are not permitted to vote while incarcerated. Voting rights are not restored automatically upon release. Convicts are eligible to vote again ten years after release.⁶

Visitation. Family members are allowed regular visitation. Public transportation runs near prisons but is not provided free of cost. Prisoners are always monitored.²

SOURCES:

¹ <<http://www.apaintl.org/Pub-Conf2000-WkshpEMartinez-En.html>>

² <<http://www.state.gov/g/drl/rls/hrrpt/2004/41753.htm>>

³ <http://www.omct.org/pdf/prev_torture/2004/stateviolence_chile_04_eng.pdf>

⁴ <<http://web.amnesty.org/library/index/engamr220062004>>

⁵ <<http://www.country-data.com/cgi-bin/query/r-2561.html>>

⁶ <<http://www.sentencingproject.org/pdfs/Rottinghaus.pdf>>



Article 17. Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.

American Declaration of the Rights and Duties of Man, 1948.

Columbia



CRIMINAL JUSTICE

Indigents. The Colombian public defense system is currently being improved through a U.S.AID-financed justice program. A private U.S. consulting corporation called Checchi is conducting an overall strengthening of the criminal justice system in Colombia, including the introduction of oral trials and the improvement of public defense services. It will be impossible to provide enough public defenders to represent the thousands of rural indigents who have been arrested in an arbitrary manner as a result of the U.S. War on Drugs and on Terrorism. Indigents who oppose the fumigation of their lands or who in any way oppose policies of the government are considered “terrorists” and may be arrested and imprisoned. In view of this, it is sadly ironic that the U.S. government hires a private U.S. corporation to improve Colombia’s public defense system.

Juveniles. Juveniles are minors until age 18. According to the UN-CRC (Convention on the Rights of the Child), minors could not be imprisoned with adults, and their punishment, even in cases of homicide, could not exceed three years. Colombia has begun to build re-education centers, each designed to house and rehabilitate 150 to 200 juvenile offenders. Also a university specialization in youth re-education is now available in Colombia, as a five-year program administered by the Capuchin Friars.

Death Penalty. The death penalty was eliminated in 1910. It should be noted, though, that for many, a prison sentence is equivalent to a death penalty. “Overcrowding severely impedes the capacity of staff to maintain control. There are cases of prisoners being kidnapped and held for ransom by other prisoners in ‘no go areas.’ Brutal conditions have produced a murder rate of one prisoner a day.” – *Colombia Solidarity Campaign*. The maximum prison term allowed by The Penal Code is 24 years.

PRISON SYSTEMS

Structure. All prisons are under the supervision of INPEC – *Instituto Nacional Penitenciario y Carcelario*. This administration is a division of the Ministry of Justice and Law – *El Ministerio de Justicia y del Derecho*. The total prison population is about 70,000, nearly twice the number that the units were designed to hold. 30% of the prisoners, about 22,000, are awaiting trial. “Many of these prisoners are held on politically motivated charges. Delays in the processing of legal cases of political prisoners is notorious” (www.colombiasolidarity.org). In the 1980s, when the prison population was about 30,000, those awaiting trial were held at small local jails. Now, President Álvaro Uribe Vélez, with the backing of the U.S., has declared a war against terrorism. Several new, high security prisons have been constructed, making a total of 168 prisons, not including provincial jails.

Standards. The prison standards delineated by INPEC have been weakened by severe overcrowding, and control is often held by paramilitaries and other prisoners with resources and backing. In emergency situations such as riots, the National Police and Army are available.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Rules governing prisoner behavior would be included in the policies of INPEC. Available sources revealed nothing regarding specific grievance procedures.

Prisoner Abuse. Although official policies do not condone abuse, actual life is insecure and terrifying. Political prisoners are especially vulnerable to abuse. In March of 2000, the U.S. signed a Program for the Improvement of the Colombian Prison System. The U.S. Federal Prisons Bureau sponsored an investment of over 4.5 million dollars to build high-security prisons where prisoners remain in their cells 23-24 hours a day. This manipulation of Colombia's prison system "has led to new levels of intimidation, humiliation and the constant violation of human rights." (Source: "Life as a Political Prisoner in Colombia" by Vincenzo Gonzáles; www.counterpunch.org).

SERVICES FOR INCARCERATED PERSONS

Health Care. Official concern for health care in prisons is evident from this bulletin from ICRC (Red Cross) News, 12/2002: "On 5 July, the Colombian National Prison Institute (INPEC) presented a special award to ICRC health delegate Marie-Therese Engelberts in recognition of the ICRC's activities to promote health care and disease prevention in the country's prisons." The activities include "a pilot community health-care project and programs to assist disabled detainees, prevent the spread of sexually transmitted diseases and provide early screening for breast cancer . . . Given the positive results obtained so far, the ICRC and INPEC plan to extend the programs to other detention centers in Colombia." In spite of these commendable Red Cross activities, many prisoners suffer serious health problems and receive no medical care. "Life inside is a constant battle for survival both physically and mentally" (V. González).

Rehabilitation Programs. In the high-security prisons, prisoners are denied the right to stay in touch with events outside and are forbidden to receive newspapers or magazines. They are not allowed radio or television. Any kind of training or treatment program is out of the question when prisoners stay locked up 23-24 hours a day. The prisoner "is not able to go outside for even the short amount of time allowed by the penitentiary regime because the paramilitaries being detained in the same prison have orders to assassinate him and no one in authority is likely to stop them." In the older facilities, various programs of education and training are offered by the Red Cross and other non-government organizations.

Reentry Programs. The international rehabilitation organization, *Ashoka*, reports: "Colombia's prisons do not address the rehabilitation of inmates. There are no socialization programs that would promote reform of prisoners' violent ways, reduce tensions, and prepare them for life after release. According to Colombia's Ministry of Justice, 95 percent of released prisoners return to crime and end up back in jail." A notable exception is the case of José David Toro who was accepted into the *Ashoka Fellowship* in 2001. Before his release from Picalaña prison, José David created a "Peace Laboratory" to help prepare inmates "for life outside prison through a combination of psychological, educational, and creative support programs." Emphasis was placed on developing work skills, with volunteers teaching inmates accounting and how to start small businesses. After his release, he founded the Horizons of Freedom Foundation with a group of 42 prisoners, former prisoners, and family members of Picalaña inmates. "He has succeeded in creating one place in the whole nation where left-wing guerrillas and right-wing paramilitary members coexist in peace—in prison, no less." The Peace Laboratory proves how armed conflict can be resolved through dialogue and mutual understanding. (For more details, go to www.ashoka.org/fellows/.)

RIGHTS OF INCARCERATED PERSONS

Voting. The research done by Brandon Rottinghaus, Northwestern University, does not include Colombia among the nations that allow prisoners to vote.

Visitation. The OAS survey by the ICHR, Inter-American Commission on Human Rights, indicates that prisoners in Colombia and other member nations are allowed visits from family and friends. In Colombia, the prison system is not at all visitor-friendly. Prisoners are often assigned to units far away from home and family. Also, according to Vincenzo González, “Visiting family and friends are warned by the paramilitaries patrolling the prisons that they will be killed if they ever come back. The INPEC guard goes to great lengths to point out which visitors are coming to see political prisoners.” Conjugal visits are permitted, but are affected by the violent and overcrowded prison conditions. In 2000 a lesbian prisoner created a world-wide furor because her partner was not allowed a “conjugal visit.”



Article 7.6 Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.

American Convention on Human Rights, 1969.

Costa Rica



CRIMINAL JUSTICE

Indigents. The Public Defenders Department, attached to the Judicial Branch, was created in 1970 to ensure the application of the principle of equality before justice, and in 1973 the Prosecution Agency and the Judicial Investigations Agency became attached to the Judicial Branch. The current rules that govern this sector are represented by the 1993 Organic Law of the Judicial Branch Council, responsible for the agreement and discipline of this branch, and law practice. The right to a full defense is recognized from the start of the penal prosecution to the conclusion of the application of the punishment. To this effect, the accused can choose a defender that she or he trusts; in its absence, a public defender shall be assigned to the case. Although the Costa Rican Judicial system is regarded as one of the best in Latin America, critics allege it is highly vertical and that there is a concentration of power in the Supreme Court.

Juveniles. The provisions and punishments provided for in the Penal Code are applied to persons over 18, while those 12 to 18 years old are subject to the Juvenile Penal Justice Law. A distinction concerning procedure, punishment, and application of punishment is made between two juvenile age groups: ages 12 to 15 and 15 to 18 years. Those under 12 must be referred by the penal courts to the National Children's Protection Board, for the necessary care and follow up. Juveniles are held in separate detention facilities in campus-like conditions that generally are considered good. The juvenile penal system held 93 youths in detention and another 507 in supervised alternative sanction programs as of publication in February 2005.

Death Penalty. There is no death penalty in Costa Rica; it was abolished in 1877.

According to the penal code, all those sentenced to prison can request the competent judge to grant conditional release upon completion of half their imposed term. Conditional release may be granted if the applicant has not been previously convicted for a common offense punishable with imprisonment of more than 6 months.

PRISON SYSTEMS

Structure. As of 11/04 there were 7619 prisoners in Costa Rica which is 177 prisoners per 100,000 citizens. This includes the pretrial prisoners as well. Most, but not all pretrial detainees are held separately from convicted prisoners. A criminal court may hold suspects in pretrial detention for periods of up to 1 year, and the court of appeals may extend this period to 2 years in especially complex cases. The law requires that suspects in pretrial detention have their cases reviewed every 3 months by the court to determine the appropriateness of continued detention. According to the Ministry of Justice, in October 2004, there were 2078 persons in pretrial detention, representing 39 percent of the prison population.

Standards. Costa Rica is known for adhering to international prison standards.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Prisoner Abuse. From August 2004 to February 2005, according to the U.S. Department of State, the ombudsman's office received 14 complaints of physical abuse of prisoners by guards, of which 11 were still being investigated, and 3 were determined to be without merit, as of time of publication.

SERVICES FOR INCARCERATED PERSONS

Health Care. By February 2005, the ombudsman's office received 163 complaints from prisoners alleging inadequate medical care, arbitrary administrative procedures, violation of due process of disciplinary procedures, unfair denial of prison transfer requests, and poor living conditions. Of these 163 complaints, 89 were still being investigated, 15 were determined to be legitimate, and 59 were determined to be without merit as of publication of this article. The ombudsman's office investigated all complaints and referred serious cases of abuse to the public prosecutor.

Reentry Programs. Some penal reform organizations are founded by, or mainly consist of ex-prisoners. Their work often centers on finding ex-prisoners somewhere to live, providing education and training and giving them support when they leave prison.

RIGHTS OF INCARCERATED PERSONS

Voting. Prisoners do not automatically lose their right to vote in the diverse jurisdictions of Costa Rica.

Visitation. AS in most parts of Latin America, prisoners can have private visits from their families in their living accommodations for hours once or twice a week. The right to Family Life applies to prisoners' families. They have not been convicted but are separated from their father, mother, brother, sister, or child. They are entitled to have as much time as can be reasonably allowed with their imprisoned family member.

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 3: Everyone has the right to life, liberty, and security of person.

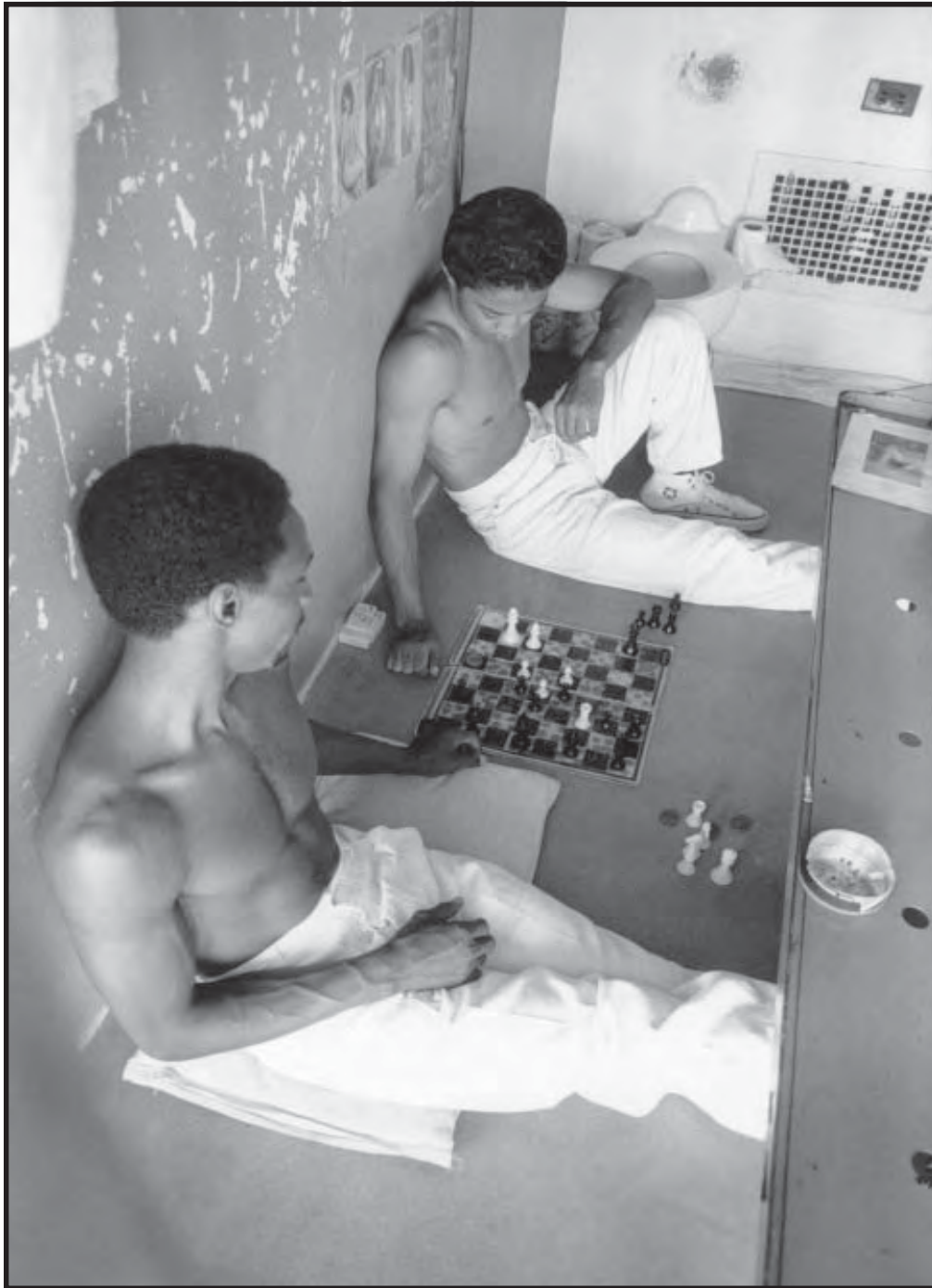
Article 5: No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.

Article 6: Everyone has the right to recognition everywhere as a person before the law.

Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

United Nations Declaration of Human Rights, 1948.



Article 15. Every person has the right to leisure time, to wholesome recreation, and to the opportunity for advantageous use of his free time, to his spiritual, cultural and physical benefit.

American Declaration of the Rights and Duties of Man, 1948.

Cuba



CRIMINAL JUSTICE

Indigents. Since everyone is “entitled” to a lawyer in this Socialist state, a public defender is not required. However, in this inquisitorial system there is a preliminary process (arrest and pre-trial for which no warrant is issued); and no lawyer is provided immediately after arrest. Though plans are under way to change this procedure, the defense lawyer materializes usually only a few minutes before the trial begins. Sometimes lawyers are reluctant to represent political prisoners for fear of jeopardizing their career.

Juveniles. Persons of voting age (16) qualify as adults in the criminal justice system. There are institutions which resemble schools that house juvenile delinquents.

Death Penalty. They do have a death penalty. There is execution by firing squad for multiple murders, murder of a child, murder with torture, and treason. Pregnant women and persons under 20 are exempt. The death penalty had been abolished in 1989 but was reinstated some time thereafter. Nobody knows exactly how many people have been executed in this secretive society, but the last known executions were three in number and were carried out after the crackdown of 2003.

The responders have seen no evidence of sentences longer than 20 years, except those given after the crackdown of April 2003, when some sentences reached up to 28 years.

PRISON SYSTEMS

Structure. Cuba has provincial and municipal prison systems, the former mostly for misdemeanors and the latter for more serious offences, both under the Ministry of the Interior. The government does not disclose the exact number awaiting trial: in 1999 it said that the figure was 8%. The prison population in 2003, according to Nils Christie, was about 55,000, with Cuba disclosing 40 maximum and 40 minimum security facilities as well as over 200 work camps. Research by the Human Rights Watch finds these numbers low. For ordinary criminals the place of pre-trial confinement is the police station for those who do not make bail (Bail is low). For political prisoners, the answer is unclear.

Standards. There are constitutional prohibitions against beating prisoners as well as withholding medicines and health care, but “security breaches” apparently nullify these. Few holds are barred in the treatment of political prisoners.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. The responders found no evidence that prisons have written rules and regulations. Prisoners report that they are beaten and/or otherwise punished for complaining about their situation. Complaints to the central authority seem to require reinforcement from family and sometimes from advocacy groups.

Prisoner Abuse. In 2004 Foreign Minister Felipe Perez Rogue stated that “Cuba meets the minimum requirements the United Nations requires for detainees.” He was referring to 95 laws governing the treatment of detainees, under which no prisoner is subject to torture or physical abuse in jail. Reportedly there are many infractions of these rules in practice. Some are: extreme overcrowding, unsanitary conditions, semi-darkened or constantly brightened cells, inadequate and sometimes spoiled food, withheld or inadequate medications, neglecting to treat illnesses; and beatings with rubber hoses and night sticks.

SERVICES FOR INCARCERATED PERSONS

Health Care. Hospitals offer the same care to prisoners and to all citizens. Everyday health care reportedly is inadequate. Unhealthful environmental conditions prevail in many, if not all, prisons. Required medication is not always provided, and reportedly it is withdrawn either arbitrarily or for a punishment.

Rehabilitation Programs. Prisoners are usually afforded one hour in the sunshine, even when they are housed in semi-darkened cells. Recreation was never mentioned in sources. However, foreign journalists who were invited to view two hospitals which contained prison units, observed hundreds of men playing baseball and volleyball in the compound. These men were probably not the “security risks” that political prisoners are thought to be.

Reentry Programs. The responders have no information regarding pre-release programs for political prisoners. In every way they are a “thing apart.” Ordinary prisoners are expected to finish high school. Then they are prepared for a trade. A program begun in 2000 trains medical professionals –in nursing, physical education, basic hygiene and epidemiology, and in areas of medical technology. The bi-monthly conjugal visitation for married and common law spouses is a way of preparing for release.

RIGHTS OF INCARCERATED PERSONS

Voting. Cuba is not in the Rottinghaus list of countries that permit its prisoners to vote.¹ The incidence of pre-trial prisoners voting would be very rare, because trials are ordinarily speedy and because elections are rare. If trials for “common criminals” are to be delayed, the accused can readily and inexpensively be released on bond. If an election did occur during this period, these persons probably could vote. Sentenced prisoners are all disenfranchised.

Visitation. Visitors may come as often as once every two weeks (with the prisoner’s good behavior) or possibly more often (since 1994). Visitors may bring food and medicine. There is no mention of transportation being provided. Prisoners are sometimes sent hundreds of miles from home, which is reported as a severe burden on families.

SOURCES:

¹ <www.sentencingproject.org/pdfs/rottinghaus.pdf>



Article 16. Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.

American Declaration of the Rights and Duties of Man, 1948.

Dominica



CRIMINAL JUSTICE

Indigents. Counsel is provided to indigents only in capital cases.

Juveniles. There is separation of juveniles but no separate prison for juveniles.

Death Penalty. Dominica has a death penalty, but it has not been used since about 1980. They do not have sentences of life without possibility of parole.

PRISON SYSTEMS

Structure. There is only one prison in the whole country. As of 2004, there were 290 prisoners. 43.4% (126) are pre-trial. There is no separation of sentenced prisoners and pre-trial detainees due to overcrowding and lack of sufficient holding cells.

Standards. There are written statutes, and a formal complaint procedure, but little enforcement.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Each prison has written rules and regulations governing prisoner behavior. DOC enforces its own rules. Complaints are entertained.

Prisoner Abuse. No corporal punishment or torture is allowed by the Constitution. There were 13 cases of misconduct brought against the police in 2004, of which 7 were for excessive force. Most such cases have been dismissed.

SERVICES FOR INCARCERATED PERSONS

Health Care. Prisoners have access to a doctor. Prison conditions are poor. Buildings are in disrepair and conditions are unsanitary. Overcrowding is a serious problem.

Rehab Programs. A recreation yard is available. They grow their own food. There is no work, no pay, and little education.

Reentry Programs. There are limited programs for pre-release or re-entry assistance for prisoners.

RIGHTS OF INCARCERATED PERSONS

Voting. Prisoners can vote by absentee ballot.

Visitation. Regular visiting is available. Visitors must get to the prison by themselves. There is no private visitation.



Article 13. Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries.

American Declaration of the Rights and Duties of Man, 1948.

Dominican Republic



CRIMINAL JUSTICE

Indigents. Most detainees and prisoners did not have prompt access to a lawyer and could not afford adequate defense services. The National Office of Judicial Defense, with foreign donor support, provided legal advice and representation to indigent persons. As of October, 2005, the government's program to train public defenders had placed 80 public defenders in Santo Domingo, Santiago, and some smaller areas. The Supreme Court also paid 97 private lawyers across the country to provide part-time legal services to indigent defendants.

Few defendants were granted bail, although bail became more common following implementation of the new Criminal Procedures Code, which requires judicial review of detentions at an earlier point in a criminal case. Many suspects endured long pretrial detention. According to several reports, 66 percent of inmates were held without charges or while awaiting trial. The average pretrial detention was more than six months. Time served in pretrial detention counted toward a sentence.

The law provides that an accused may be detained for 48 hours before being presented to judicial authorities. It also provides for recourse to habeas corpus proceedings to request the release of those unlawfully held; however, at times the police violated constitutional and legal provisions by detaining suspects for investigation or interrogation beyond the prescribed 48-hour limit or detaining suspects without a warrant. Police often detained all suspects and witnesses in a crime and used the investigative process to determine who were innocent and merited release, and who they should continue to hold. Additionally police continued to detain relatives and friends of suspects in order to pressure suspects to surrender or to confess. These practices were employed less often after the new Criminal Procedures Code came into force.

The failure of prison authorities to produce the accused for court hearings caused a significant percentage of trial postponements. In addition inmates often had their court dates postponed because their lawyer or witnesses did not appear. The authorities held some inmates even though there were no formal charges against them.

The law provides for a presumption of innocence, the right of appeal, and the right to confront or question witnesses. The law establishes a citizen's right not to be deprived of liberty without trial or legal formalities, or for reasons other than those provided by law; the right not to be a witness against oneself; and the right to a defense in an impartial and public trial. The authorities commonly violated these rights.

Citizens have recourse to the remedy of *amparo*, an action to seek redress of any violation of a constitutional right, including violations by judicial officials. This remedy was rarely used, except by those with sophisticated legal counsel.

Lawyers from the National District Prosecutor's Office monitored the investigative process to ensure that detainees' rights were respected in high-volume police stations and in several National Drug Control Directorate (DNCD) offices. There was some evidence that assistant prosecutors

at times acquiesced in traditional police practices rather than attempt to raise these practices to constitutional standards. However, with the implementation of the new Criminal Procedures Code in September 2004, detainees received additional protections, and respect for detainee rights improved, including increased enforcement of time limits for pretrial detention.

Juveniles. Juveniles often are detained with the general prison population in detention facilities. The authorities sometimes treated minors as adults and incarcerated them in prison rather than juvenile detention centers. However, juveniles are separated from adults in the prisons.

Juveniles held at the Department for Minors at the Villa Juana police station commonly were held well beyond the 12-hour limit for sending the case to the district attorney's office. The law prohibits interrogation of juveniles by the police or in the presence of police; prosecutors and judges handle questioning.

Death Penalty. There is no death penalty in the Dominican Republic. The Dominican Republic does not currently have a provision for life sentences. It is being debated.

PRISON SYSTEMS

Structure. According to the Directorate of Prisons, the police and the military held approximately 13 thousand prisoners and detainees in 35 prisons with an intended capacity of approximately 9 thousand. Virtually all prisons experienced extreme overcrowding. La Victoria prison, the largest in the country, held more than 3500 prisoners in a facility designed for one thousand and had only 354 beds for its inmates. Rafey prison held approximately 1200 prisoners in a facility designed to hold 600. Pretrial detainees were held together with convicted prisoners.

Standards. During the on-site visit of the Inter-American Commission on Human Rights in 1999, it was noted that there was no set of regulations nor any manual on the treatment of prisoners in the prison system of the Dominican Republic, nor in the particular prisons.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. The Director General of Prisons recognized, during the visit of the Inter-American Human Rights Commission, that "discipline has traditionally been imposed in an improvisational fashion, as there was no system or regime for managing the prisons or for the treatment of prisoners."

Prisoner Abuse. Although the law prohibits such practices, security force personnel, primarily mid-level and lower-ranking members of the police, continued to torture, beat, and otherwise physically abuse detainees and prisoners. According to human rights organizations, both the National Police and prison officials used forms of torture. The method most often used was beating. Human rights organizations also reported asphyxiation with plastic bags to elicit confessions as a form of torture.

Senior police officials took the prohibition on torture and physical abuse seriously, but lack of supervision, training, and accountability throughout the law enforcement and corrections systems undercut efforts to contain the problem. Human rights groups reported repeated instances of physical abuse of detainees, including various forms of torture, beatings, and sexual abuse. Prison conditions ranged from poor to harsh. Prisoners were not taken to their trials unless they paid bribes to the guards. Prison officials accepted money in exchange for a recommendation that a prisoner be furloughed or released for health reasons.

Although a warden who reports to the attorney general was responsible for running each prison, in practice a police or military officer (generally appointed for a period of only three to six months and responsible for providing security) was usually in charge of the prison. Overcrowding was so severe that some prisons were totally out of the authorities' control and were, in effect, operated by gangs and armed inmates.

The press and human rights groups reported extensive drug and arms trafficking within the prisons, as well as prostitution and sexual abuse, including abuse of minors. There were a number of deaths due to negligence in the prisons. During a riot in March, inmates set fire to a cellblock. At least 136 inmates died and 26 were injured. While the Higüey prison was built to hold 80 inmates, the prison director reported that it held 426 inmates at the time of the fire. The burned cellblock, designed for no more than 40, held more than 150 inmates. The majority of the persons who died in the fire were in pretrial custody.

Although female inmates generally were separated from male inmates, there were some cases of male and female prisoners being held together. Half of the total female population was held in a female-only prison. Conditions in the female prison wings generally were better than those in male prison wings. There were some reports of guards physically and sexually abusing female inmates.

Inmates were not separated by crime within the prison population; however, they could be put into solitary confinement for disturbances while incarcerated.

SERVICES FOR INCARCERATED PERSONS

Health Care. The prisons were seriously overcrowded, health and sanitary conditions were poor, and some prisons were out of the authorities' control. Budget allocations for necessities such as food, medicine, and transportation were insufficient. Most inmates begged or purchased food from persons in the vicinity of the prison or obtained it from family members.

Prisons often did not provide adequate medical care to inmates. Prisoners immobilized by AIDS or who had terminal illnesses were not transferred to hospitals.

Rehabilitation Programs. There has not been any rehabilitation or education program. In 1997, a private program was begun for the rehabilitation of drug addicts among the prison population. The program does not receive any funding from the state. Some Dominican prisoners work on small construction works and some workshops in their prisons, but the majority have no work at all.

Reentry Programs. There is no programming of any kind offered by the system.

RIGHTS OF INCARCERATED PERSONS

Voting. Incarcerated persons cannot vote.

Visitation. There are reports of visitors having to bribe prison guards in order to visit prisoners. (We suspect these reports apply to detention facilities.) Prisons have a broad and liberal visitation policy. Contact and conjugal visitations (male only) are allowed 2 -3 times per week. Female inmates, unlike their male counterparts, were prohibited from receiving conjugal visits. Those who gave birth while incarcerated were permitted to keep their babies with them for a year.

SOURCES:

1. Country Reports on Human Rights Practices - 2005, Released by the Bureau of Democracy, Human Rights, and Labor, March 8, 2006
2. Report of the visit by the Inter-American Commission on Human Rights, 1999.



Article 18. Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

American Declaration of the Rights and Duties of Man, 1948.

Ecuador



CRIMINAL JUSTICE

Indigents. Although a public defender system exists, in practice only 32 attorneys were available to defend the large number of impoverished suspects throughout the country.

NGOs reported that the Government did not have an established practice to enforce the law's provision that criminal detainees are entitled to prompt access to lawyers and family members. Delays varied depending on the circumstances and officials' willingness to enforce the law; alleged narcotics traffickers commonly waited 24 to 48 hours for these visits. Detainees with sufficient resources often bribed prison officials to facilitate access.

The Constitution explicitly recognizes the indigenous communities' right to exercise their own system of justice, based on their traditions and customs. However, the law does not yet specify how this is to work in practice. This parallel system raised questions of both jurisdiction and conformity to the right to a fair trial.

Juveniles. At the age of 18 juveniles are kept separate in the Ministry of Social Welfare.

Death Penalty. Ecuador abolished the death penalty in 1906. A proposal to reinstate it was defeated in 1994. A sentence of life without parole is possible in Ecuador since the country has no death penalty. Prisoners are not eligible for parole until they have served three-quarters of their sentence.

PRISON SYSTEMS

Structure. The 34 prisons and jails in Ecuador are under the direction of The Directorate of Social Rehabilitation, a division of the Ministry of Government and Justice.

As of December, 2005, 12,394 prisoners nationwide were held in facilities built to hold 7463. The law permits prisoners to be held for an indefinite period after indictments have been issued but before they have been convicted or sentenced. Therefore, 10 to 15 percent of the prisoners had been tried, and 60 percent had not been sentenced.

Pre-trial detainees/remand prisoners are 63.0% of the prison population (as of 1/12/2005). A 2005 U.S. State Department report states that "pre-trial detainees were held with convicted prisoners."

Standards. There are laws which set forth prison standards. However, In January of 2005, President Gutierrez declared Ecuador's overcrowded prisons to be in a "state of emergency" and promised extra funding to improve facilities.

Conditions in prisons and detention centers generally were poor and tended to be worse in the tropical coastal areas than in the temperate highlands. Overcrowding was a chronic problem in most facilities.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. There are not enough guards to enforce prison policies. Many guards are poorly trained, unreliable, and brutal. Some guards sleep with the women, harassing them.

Complaints come in the form of visible, dramatic protests. Hunger strikes are common, and women have sewn their lips shut as a protest. On numerous occasions, prisoners have held visitors as hostages to protest overcrowding, poor conditions and long sentences. Each prison is on an individual basis, sometimes with state rules for enforcement.

Prisoner Abuse. While the law prohibits torture and similar forms of intimidation and punishment, some officers continue to torture and abuse suspects and prisoners, often with impunity.

SERVICES FOR INCARCERATED PERSONS

Health Care. Most prisons provide poor medical care, and urgent medical conditions may receive only minimal attention. Food is insufficient in both quantity and quality, and prisoners must pay for adequate nutrition from their own funds.

A number of prisons experienced serious outbreaks of disease, and medical care often was inadequate. The daily amount allocated for prison rations was \$0.75 per inmate.

Rehabilitation Programs. Although the laws called for rehabilitation of prisoners, few facilities had space, staffing, and equipment for education or training programs. The women's prison in Quito provides both academic and vocational courses. Private factories hold prison work contracts. All prisoners are expected to work and are paid a minimum wage. One-third of the wages go to the prisoner upon release; one-third to pay expenses while in prison; and one-third to the court to take care of expenses.

Non-government programs exist, such as the *Ashoka* program developed by Ximena Costales. The program began in three men's prisons in Quito, and has shown dramatic success. Of over 100 prisoners who went through the program and have been released, none have been returned to prison.

Re-entry Programs. Some re-entry assistance is provided by non-government groups or individuals. For example, Ximena Costales rehabilitates prisoners in Ecuador through self-employment training and the establishment of small businesses. Her approach virtually eliminates recidivism while sowing the seeds of self-employment in poor communities. After learning how to read and write, prisoners are given at least 40 hours of instruction in basic management, total quality management, and higher-level business techniques. Her most advanced students tutor fellow prisoners in reading and writing. Ximena's goal is to help prisoners learn how to live their lives with dignity, take charge of their own lives, assume leadership roles, and devise plans to become productive members of society while retaining their cultural identity.

Ximena has involved the School of Business Administration at the Catholic University of Quito in a program that involves business students in marketing and planning for prison-based businesses. Plans call for the program to offer academic credit to inmate/students. Her program is sponsored by *Ashoka*, whose mission is to develop social entrepreneurship around the world. (Go to www.Ashoka.org)

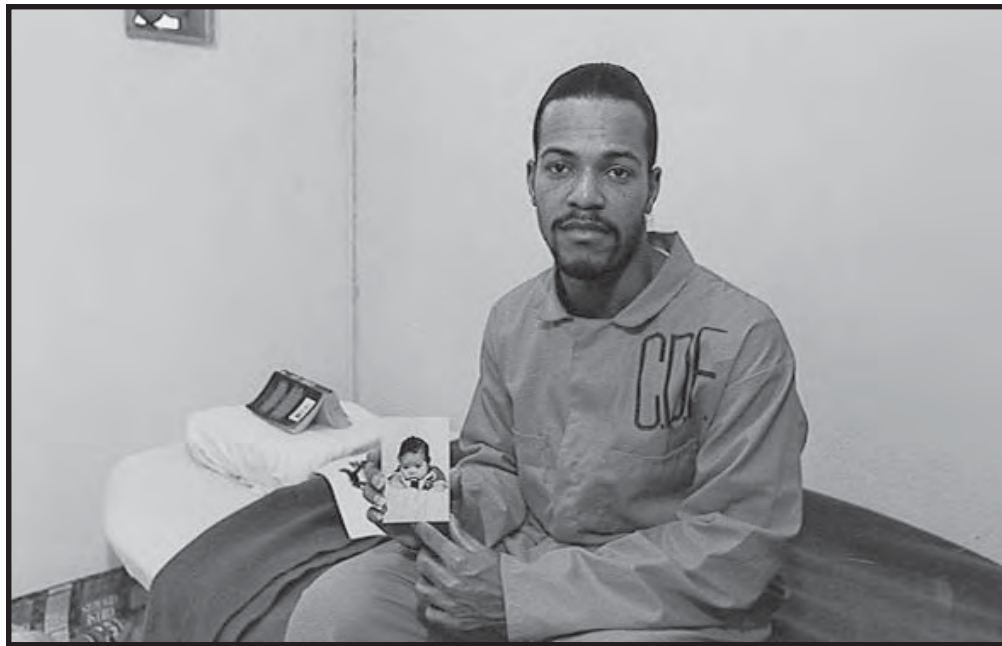
Regardless of the legality of a detention, a prisoner may be released only by court order. In some cases, detainees who are unaware of this provision, or who do not have the funds to hire a lawyer, may remain in prison for an extended period before being released. Bail generally was not available, and the law prohibits it in cases of narcotics and major offenses (offenses that “affect or put at risk” the public, punishable by 3 to 35 years’ imprisonment).

RIGHTS OF INCARCERATED PERSONS

Voting. Like most South American countries, Ecuador does not allow prisoners to vote. Voting rights can be suspended depending on the severity of the crime. Sources did not say whether their voting rights were restored after release.

Visitation. Visiting arrangements appear to be varied and flexible. Lawyers and families are allowed to visit. Caitlin Dunklee, a student from New York’s Hunter College described her visits to Litoral, the nation’s largest prison located in Guayaquil. She simply bribed a guard with whiskey to enter, and became a familiar face on the prison grounds, with no one objecting. On a second trip to Ecuador, she brought medical and sanitary supplies that she purchased with donations. She reported that visitors, lawyers and even various vendors come and go at all hours.

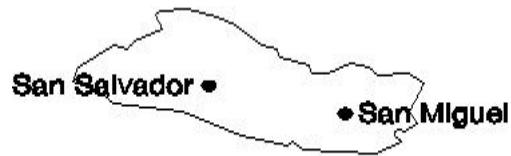
In about 2004, the men’s section of Litoral Prison held 1100 prisoners and the women’s section held 325, plus about 60 children who have nowhere else to go. The entire complex was designed to hold 600 prisoners. Women may visit the men’s side for conjugal visits lasting up to eight hours. No condoms are provided, nor is there any education about AIDS or sexually transmitted diseases.



Article 29. It is the duty of the individual so to conduct oneself in relation to others that each and everyone may fully form and develop his personality.

American Declaration of the Rights and Duties of Man, 1948.

El Salvador



CRIMINAL JUSTICE

Indigents. There is a public defender system of providing counsel to indigent defendants.

Juveniles. The age of majority is 18. There are separate prisons for juveniles, though those sentenced before the age of 18 remain in these juvenile centres indefinitely beyond the age of 18. There are calls for a separate, intermediate space for such juveniles.

Death Penalty. There is no death penalty. There are cases of summary executions inside the prisons, often unresolved. Technically, the maximum sentence is 35 years, though in many cases numerous sentences are added together, leaving a total of 100's of years. Sentences are extended if inmates are implicated in internal disturbances.

PRISON SYSTEMS

Structure. The prison system is national. All prisons are part of the national system. Each of the 14 departments (states) has at least one. There are a couple of maximum security institutions, plus a couple of prisons for women, and a medical prison, for a total of 19 prisons, besides the holding cells at local police barracks. The statistics for "procesados" versus "condenados" vary from 30% - 90%. As of 31 August 2005, the official figures were: condenados, 8663; procesados, 3831. Only four or five prisons in the system are exclusively one or the other, though technically and legally, all should be. In the case of gang members and ex-police officers, the populations are mixed in the same "recintos" (open cell-block areas). Each of the two main rival gangs has two prisons designated exclusively for them, and there is one for ex-police officers.

Standards. There are written prison standards. The director of each prison is responsible for enforcing these, with serious cases being referred to the national director.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Regulations are established at the national level, though these are enforced with some discretion at the local level. These are often posted somewhere in the prison. There are mechanisms for lodging complaints, though non-conformity with the whole system of order and discipline has provoked numerous internal strikes and riots over the past couple of years, often concurrently in several prisons, plus a number of external protests, generally organized and conducted by family members.

Prisoner Abuse. Solitary confinement is used as a disciplinary measure. More serious cases involve transferal to one of the two maximum security institutions. There has been much protest, on the part of inmates, family members and human rights organizations, against the arbitrary nature of these transferals, as well as against the legality/constitutionality of the measures implemented in these prisons, including a case brought before the Inter-American Court.

SERVICES FOR INCARCERATED PERSONS

Health Care. There is minimal health care provided. Nobody—much less prisoners—receives adequate health care in El Salvador (unless one is able to obtain it through the private system, unavailable to prisoners).

Rehab Programs. Prisons do have work, education and recreation programs, though these are available for a minority of prisoners. “Work” programs would be primarily production workshops. Educational opportunities, besides these occupational workshops (carpentry, bakery, tailoring, etc), would generally include grades 1-9, though high school is occasionally available, usually by correspondence. Recreational space generally includes a small soccer field, a basketball court and a weight-lifting area. These spaces must be shared by the usually very over-crowded prison population.

Reentry Programs. There is a relatively-new trial program for inmates to work outside the prison during the day, for a minimal number of inmates. On the basis of conduct, attitude and the completion of programs made available in the prisons (diplomas for such programs are in great demand), inmates have a right to apply for half-time or two-thirds time release. The latter is more commonly granted than the former.

RIGHTS OF INCARCERATED PERSONS

Voting. Prisoners do not have the right to vote. Following release from prison, it’s understood that this right is restored, provided they have been able to obtain their new “DUI”, a multi-purpose ID card, recently implemented.

Visitation. Visiting privileges have been reduced in the past year or two, as a means of punishing protesters and establishing order. Such restrictions include the length of visit (generally reduced to 4 hours, twice per week), the number of visitors permitted at a time (generally 1 or 2), besides stricter security checks upon entry, including photo ID, highly restricted entry of food items and other gifts, and undignified (and often unhealthy) vaginal or anal checks. “Visitas intimas” are permitted for many male inmates, once approved on the basis of the length and stability of the relationship, and a series of medical examinations. It’s believed that female inmates are not granted the same right. The state does not provide transportation for visitors.



Article 11.2 No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

American Convention on Human Rights, 1969

Grenada



CRIMINAL JUSTICE

Indigents. According to report of the U.S. Secretary of State, “the law provides for the right of fair public trial which is generally observed. There is a presumption of innocence. The court appoints attorneys for indigents only in cases of murder or other capital crimes. In other cases that reach the appellate stage, the court appoints a lawyer if the defendant was not represented previously, or reappoints earlier counsel if the appellant no longer could afford the lawyers services. With the exception of persons charged with a killing and foreign born drug suspects, the court grants most defendants bail while awaiting trial.”

Juveniles. There are no inmates under the age of 18.

Death Penalty. They are de facto without a death penalty. The last execution was in 1978.

PRISON SYSTEMS

Structure. There is one prison which houses both pre-sentence and sentenced inmates. In 2/22/05, there were 237 inmates over the age of 18, 41 of whom were pre-sentence, 19 were women. None were under 18.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Prisoner Abuse. Torture and other cruel, inhuman, or degrading treatment or punishment are prohibited by law, and there were no confirmed reports that government officials employed them. However, there were occasional allegations that police beat persons being detained. Flogging, a legal form of punishment, was rare but was used as punishment for sex crimes, which accounted for 50 percent of court cases.¹

RIGHTS OF INCARCERATED PERSONS

Voting. Grenada is not in the Rottinghaus list of countries that permit its prisoners to vote.²

SOURCES:

¹ <<http://www.state.gov/g/drl/rls/hrrpt/2005/61728.htm>>

² <www.sentencingproject.org/pdfs/rottinghaus.pdf>



Article 14. Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.

Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him of a standard of living suitable for himself and for his family.

American Declaration of the Rights and Duties of Man, 1948.

Guatemala



CRIMINAL JUSTICE

Indigents. The public defender system is the Institute of the Public Penal Defense. It functions at the time offenders enter into the system. A defender is nominated to give them immediate attention. After that, depending on the crime, the case is given to a special unit inside the Institute. Each defender has to litigate an average of 15 cases per month. This means there are not enough public defenders at the institution.

Juveniles. Young people are considered adults for the purposes of the criminal justice system at 18 years. The juvenile population is kept separately from the adults in different facilities.

Death Penalty. The penal system includes the death penalty. There are 34 persons on death row. Presently there is a moratorium and there has not been any execution since 2000.

Legally, they do not have sentences of life without possibility of parole, but in fact, they do, since the maximum sanction is 50 years. and some times they prescribe more than one sentence.

PRISON SYSTEMS

Structure. All prisons are state prisons. There are 12 pre-trial prisons and 6 for sentenced prisoners. There are also 23 centers in charge of the National Civil Police, which according to the law, is illegal.

To June 2004 in the Department of Guatemala, there were a total of 8480 persons in deprivation of freedom: 4857 are in preventive prison (pre-trial) and 3623 in accomplishment of sanction.

Standards. There are no written prison standards. There are rulings from about 1950, which are not applied. A penitentiary law is being promoted from about 10 years ago, without possibilities of being approved at the Congress of the Republic.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Prisons do not have written rules and regulations governing prisoner behavior. Since there is neither law nor rulings, grievances are not possible. Prisoners exercise authority but without any coordination with the authorities.

Prisoner Abuse. Guatemala does not expressly prohibit corporal punishment, torture, dark cells, or any other cruel, unusual or degrading treatment, since as said before, there are no regulations. There is only Article 19 of the Constitution that regulates this matter.

SERVICES FOR INCARCERATED PERSONS

Health Care. The prisons do not provide adequate health care for prisoners.

Rehab Programs. The prisons do not have known work, education and recreation programs. There are some small programs promoted by the prisoners which could disappear with the new security policies being implemented.

Reentry Programs. They do not have any known programs for pre-release or re-entry assistance for prisoners.

RIGHTS OF INCARCERATED PERSONS

Voting. Legally only those who are sentenced can not exercise the right to vote, but in Guatemala this right is denied to all prisoners, including those in pre-trial.

Visitation. For men, there is a visiting system for friends and relatives; and there are marital visits without having to prove legal marriage by documentation. For women there are only family visits, - even though in practice they receive visits from friends. There is no right for marital visits for women.

At the present time there is a method in process of implementation which consists of the following: for those in pre-trial, the Director of the Penitentiary system, is requesting a list of 8 persons that can visit them, to whom a special identification is to be made in order for them to be the only ones authorized to visit the reclused. By these means the Director intends to identify the people that come to visit and to limit the number of visitors, restricting the free access to this right and also as a manner of control.



Article 24. Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

American Declaration of the Rights and Duties of Man, 1948.

Guyana



CRIMINAL JUSTICE

Indigents. There is no comprehensive public defender system in Guyana. Though their government does recognize the right to representation, it only provides it in murder cases. In lesser cases it is confined to those who can pay for the services of a lawyer.

Although the law recognizes the right to legal counsel, in practice, with the exception of cases involving capital crimes, it was limited to those who could afford to pay. There is no public defender system; however, a defendant in a murder case would receive a court-appointed attorney if the case reached the High Court.

The Georgetown Legal Aid Clinic, with government and private support, provided advice to persons who could not afford a lawyer, particularly victims of domestic violence and violence against women.

Juveniles. Juvenile offenders aged 16 and older were placed in the adult prison population. Juvenile offenders aged 15 and younger were held in the NOC, which originally was conceived as a training and rehabilitation facility rather than a juvenile detention center. There were complaints that juvenile runaways or those out of their guardians' care were placed with juveniles who had committed crimes. The NOC facility had multiple problems including staffing capacity and capabilities.

When any person apparently has the age of sixteen years and is committed to any prison, the minister may order such prisoner to be transferred to an approved school, there to be kept as if he had been committed to such school by the court. According to the U.S. Department of State Country Reports on Human Rights Practices - 2002, released by the Bureau of Democracy, Human Rights, and Labor March 31, 2003, police continued to place juvenile offenders in a fairly adequate separate facility; however, female juvenile offenders were held with adult prisoners.

Death Penalty. Guyana has a death penalty, and currently there are approximately 25 people on death row. In 2002 there were no executions. There are life sentences in Guyana without possibility of parole.

PRISON SYSTEMS

Structure. Guyana does not have separate federal and state prisons. It does have precinct jails, but those are considered holding tanks, since some prisoners have been held two years there due to the Guyana justice system being overburdened. It holds approximately 1524 pre-trial detainees at any given time. There are separate detention facilities though many human rights groups claim they exhibit poor conditions.

Since there were no facilities in Georgetown to house female offenders aged 16 and over, women awaiting trial were held in the same facilities as men. The Prison Authority reported that there were 69 female inmates in the women's prison located in New Amsterdam.

Although precinct jails were intended to serve only as pretrial holding areas, some suspects were detained there as long as two years, waiting for the overburdened judicial system to act on their cases.

The law requires that a person arrested and held for more than 72 hours be brought before a court to be charged, and this was generally observed in practice. Bail was generally available, except in capital offenses and narcotics trafficking cases. Although narcotics trafficking was not a bailable offense, some magistrates granted bail to drug defendants.

Although the law provides criminal detainees prompt access to a lawyer of their choice, as well as access to family members, in practice these rights were not fully respected. Police routinely required permission from the senior investigating officer, who was seldom on the premises, before permitting counsel access to a client. There were reports that senior officers refused to grant prompt access to prisoners.

Lengthy pretrial detention, due primarily to judicial inefficiency, staff shortages, and lengthy legal procedures remained a problem, despite the chief justice's efforts to have the courts deal more quickly with inmates on remand. Pretrial detainees made up approximately one-third of the prison population, and the average length of pretrial detention was 18 to 20 months.

Standards. There are written prison standards under the "Directorate of Prisons" and its director. However enforcement is the subject of a great deal of international criticism. As a general rule the enforcement of the standards is considered weak.

Prison and jail conditions were poor, particularly in police holding cells. However, the GHRA stated that "prisons have improved immeasurably in the last decade" and met minimum international standards. The Prison Authority reported that there were 1485 prisoners in five facilities, nearly half of whom were in Georgetown's Camp Street Prison, the country's largest. That prison, expanded to hold 500 inmates, held an average of 700 prisoners during the year, far below the one thousand it used to hold.

Although sanitary and medical conditions in police holding facilities varied, these conditions were worse than those in the prisons. Some jails were bare, overcrowded, and damp. Few had beds, washbasins, furniture, or utensils. Meals normally were inadequate; friends and relatives routinely had to bring detainees food and water. Cells rarely had sanitary facilities, and staff members sometimes escorted inmates outside the cells to use holes in the floor for toilets. Inmates generally slept on a thin pallet on the concrete floor.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Every prisoner shall be subject to Prison Rules, and shall also be subject to prison discipline during the whole of his imprisonment, whether he is or is not within the limits of any prison. Where any prisoner commits any major prison offences and on such prisoner being found guilty thereof, on an enquiry before the Director, the Director may impose any or all of the following punishments: reduction of diet not exceeding fourteen consecutive days; suspension or postponement of any privileges for any period not exceeding ninety days; forfeiture of remission for any period not exceeding ninety days.

Any prisoner may, within 48 hours of the imposition of any punishment, appeal in writing to the Director who may allow the appeal, or reduce, confirm or increase such punishment as he may see it. No prisoner shall be punished until he has had an opportunity of hearing the charge against him and making his defense.

Prisoner Abuse. The Constitution prohibits torture; however, police continue to abuse suspects. The GHRA continued to consider mistreatment of prisoners by prison officers a problem. Moreover, inmates, attorneys, and judicial authorities provided credible evidence that police and correctional officers frequently ignored the actions of other inmates who beat, robbed, or otherwise mistreated “problem” prisoners.

Guyana does not prohibit corporal punishment, but torture is specifically outlawed; however this is only in theory as many believe it is still practiced. This is not to say it is anything outrageous as there were no reports of any incidents as of 2004.

Attempts were made to give all prison officers human rights training, and the senior level management of the Prison Service made serious efforts to combat cruel, inhuman, or degrading treatment in the prisons. The GHRA did not consider mistreatment of prisoners a problem in the prison system.

SERVICES FOR INCARCERATED PERSONS

Health Care. The Chief Medical officer shall assign in respect of each prison, a government medical officer who shall have control generally of the health and medical welfare of the prisoners and the sanitation of the prison; and such medical officer shall perform such other duties as may be directed by this Act or by Prison Rules.

According to the U.S. Country Report the prison sanitary and medical conditions are deplorable, particularly in “temporary” cells. These cells are overcrowded, damp and bare, lacking the most basic amenities, such as beds, washbasins, furniture, utensils and plumbing facilities. The toilet is nothing more than a hole in the floor. At night, prisoners lie down on a thin pallet on the floor. As for food, meals are not provided, so the prisoner is dependent upon food brought to him by friends and relatives.

Some prisons officers received basic medical training, but there was no doctor to perform regular visits at any of the prisons. The prison system faced issues of staffing constraints and lack of resources.

Rehabilitation Programs. Conditions were generally adequate in the only women’s prison, which is at New Amsterdam, in a facility that held men and women in separate dormitory-type buildings. There were a number of vocational and educational courses. All prisoners may with the approval of the director be taken beyond the limits of a prison and put to such labor as may be prescribed by Prison Rules.

Reentry Programs. The Parole Board is an advisory body to the Minister of Home Affairs, to help him determine whether a prisoner is eligible to be released on licence (Parole) and what conditions should be attached to such a release. It is a system that is designed to allow rehabilitated prisoners a chance to serve part of their sentence in the community. In this way they are allowed a chance to be reintegrated into society gradually and conditionally.

A prisoner serving a determinate sentence may apply for parole once he/she has served one-third or 12 months of the sentence, whichever is longer. Additionally, for a prisoner serving an indeterminate sentence (life), he/she may apply for parole after serving 10 years of the sentence. Parole is not an event; it is a process. It has four stages each overseen by a different group or a person.

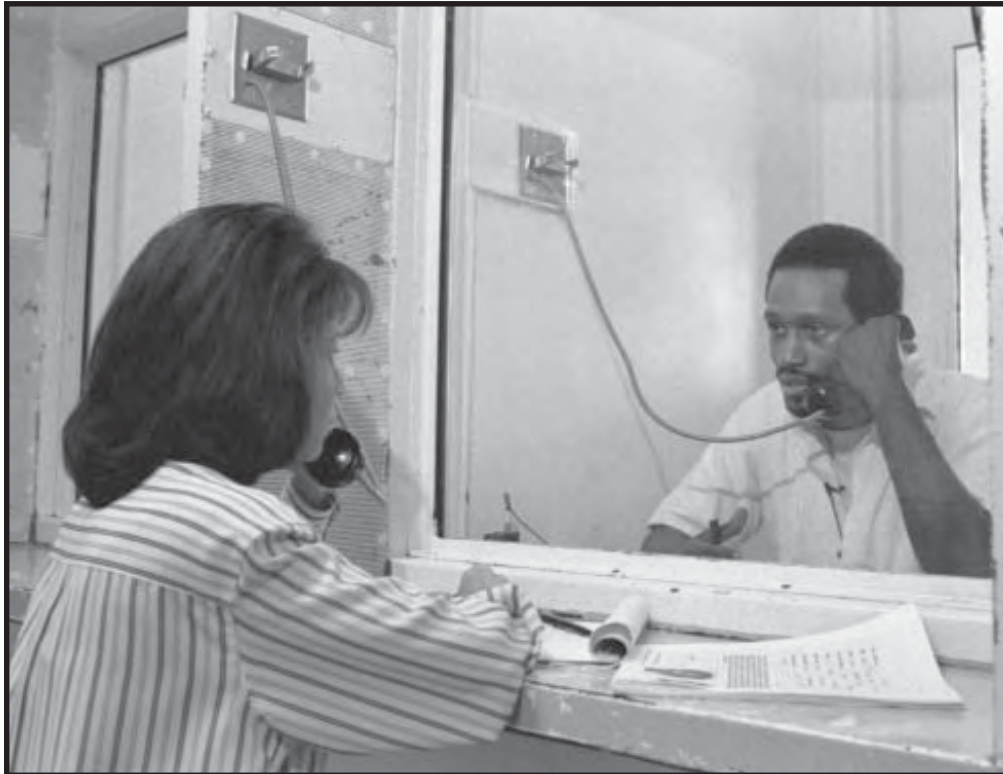
RIGHTS OF INCARCERATED PERSONS

Voting. Guyana is not in the Rottinghaus list of countries that permit its prisoners to vote.¹

Visitation. The Guyana Human Rights Association urged that female inmates' responsibility for children be recognized in terms of length of sentence and facilities for family contact.

Source:

¹ <www.sentencingproject.org/pdfs/rottinghaus.pdf>



Article 25. Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise to be released. He also has the right to humane treatment during the time he is in custody.

American Declaration of the Rights and Duties of Man, 1948.

Haiti



CRIMINAL JUSTICE

Indigents. Detainees are generally allowed access to a lawyer of their own choosing. Many detainees cannot afford the services of an attorney, and the government does not provide free counsel.

The constitution also expressly denies police and judicial authorities the right to interrogate suspects unless legal counsel or a representative of the suspect's choice are present, or they waive this right; this right also is abridged in practice.

Despite the efforts of local human rights groups and the international community to provide free legal aid, many interrogations occur without presence of counsel. However, some defendants have access to counsel during trials. While the constitution provides defendants with a presumption of innocence and the right to be present at trial, to confront witnesses against them, and to present witnesses and evidence in their own behalf, in practice judges frequently deny defendants these rights.

Juveniles. By law, young people are treated as adults in the criminal justice system when they reach age 17. In practice, they may face adult court at a younger age. Due to lack of available space in police facilities, minors and adults often were held in the same cell. Juveniles are to be kept separate from adults in prisons.

After a November 2005 visit to study the situation of children and adolescents in the country, a joint delegation from the UN Children's Fund (UNICEF) and the IACHR criticized the "prolonged periods of detention without charges being brought against them and virtually without judicial controls, including the imprisonment of 10-year-old children, in flagrant violation of the law."

Death Penalty. There is no death penalty in Haiti. They do have life sentences.

PRISON SYSTEMS

Structure. The prison population numbered 3670 as of November, 2005. Approximately 89 percent of prisoners still awaited a judicial determination on their cases; only 417 had been sentenced. The situation was particularly grim at the National Penitentiary, where out of 1833 prisoners, 73 were sentenced, about 4 percent of the population. The prison population did not reflect the large number of persons who were held in police stations around the country in prolonged preventive detention for longer than the constitutionally mandated 48-hour time period. Due to poor record keeping at the police stations, it was difficult to estimate the number of people held in preventive detention. Male and female prisoners are held separately.

Overcrowding prevented the separation of violent from nonviolent prisoners or convicts from those in pre-trial detention. Many were incarcerated in temporary holding cells, particularly in the provinces.

Police often apprehended persons without warrants or on warrants not issued by a duly authorized official. The authorities frequently detained individuals on unspecified charges or pending investigation. Bail is available at the discretion of the investigative judge. Bail hearings are not automatic, and judges usually granted bail only for minor cases and based on compelling humanitarian grounds such as a need for medical attention.

Standards. The prison system has a code of regulations and general discipline which conform to national and international law.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. None of the material we found mentioned written rules or grievance procedures.

Prisoner Abuse. Members of the Haitian National Police (HNP) continued to commit arbitrary and unlawful killings. With rare exceptions, there was no follow up or investigation into these killings.

Although the law prohibits such actions, members of the security forces continued to violate prohibitions against torture and other cruel, inhuman, or degrading treatment. Police officers use excessive and sometimes deadly force in making arrests or controlling demonstrations and rarely are punished for such acts. Members of the HNP also used excessive force, such as shooting and using teargas, to suppress demonstrations.

The Carrefour police station (also called Omega) was known as a center of torture and beatings of detainees. On May 6, 2005 a team from the National Network of Defenders of Human Rights (RNDDH) visited the station and spoke with 30 detainees, who denounced the mistreatment they had received. The delegation observed scars on some detainees, apparently from beatings they received while being arrested.

There were credible reports of disappearances after arrests by the HNP during 2005. In December 2004, the HNP used excessive force to quell a riot at the National Penitentiary; 7 prisoners were killed and 17 injured. Allegations of human rights abuses by the HNP, although diminished, continued throughout 2005.

SERVICES FOR INCARCERATED PERSONS

Health Care. Prisoners and detainees continued to suffer from a lack of basic hygiene, malnutrition, poor quality health care, and, in some facilities, 24-hour confinement. Most prisons periodically suffered from lack of water, especially in the provinces. The incidence of preventable diseases such as beriberi, AIDS, and tuberculosis increased.

The DAP conducted objective testing of prison physicians and nurses to exclude those who were inadequately trained. Doctors were available in the capital but were less frequently available to those incarcerated in the provinces. Nurses did not conduct daily checkups on the physical condition of inmates. Dispensary supplies were limited, and family members often had to purchase needed medication.

Rehabilitation Programs. Detention and prison facilities are severely overcrowded. Many of those incarcerated do not get six hours of out-of-cell time, let alone educational or recreational programming.

Re-entry Programs. We are not aware of any formal pre-release or re-entry programming. Release from prison is haphazard. In Port-au-Prince, most are eventually released through informal intervention of a legal official in response to a bribe or community or personal pressure, or after they have served the equivalent of the sentence they would have earned had they been proven guilty.

RIGHTS OF INCARCERATED PERSONS

Voting. Prisoners are not allowed to vote. There are no restrictions on voting following imprisonment.

Visitation. Visits are allowed daily in prisons. Visits are more limited in detention facilities. There are no private family or conjugal visits.

SOURCES:

¹ Bureau of Democracy, Human Rights, and Labor, March 8, 2006.

² Incarceration and Enfranchisement: International Practices, Impact and Recommendations for Reform.

³ Prolonged Pretrial Detention in Haiti.

Article 26. Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

American Declaration of the Rights and Duties of Man, 1948.



Honduras



CRIMINAL JUSTICE

Indigents. A public defender program provides assistance to those unable to afford an adequate defense. There are over 232 public defenders that provided free legal services to 45% of the prison population in the main national penitentiary in Tamara during 2004. It is difficult for public defenders to meet the volume of demands of an unautomated, under funded, labor-intensive criminal justice system. Under the new Criminal Procedures Code, cases cannot proceed if a suspect does not have legal representation. There were 50,551 persons represented by public defenders during 2003 and 39,505 represented by public defenders during 2004. This is roughly one public defender per 150 detainees. The demands placed on the public defender system has severely overtaxed its resources.

The new Criminal Procedures Code provides defendants with additional rights that reduce the likelihood of being detained, including strict timelines for actions during the criminal process. The public defender uses this code to assist detainees in their defense and in assuring their rights. The new code reduced the number of pre-trial detainees and established procedures so that detainees will not be held in prison beyond their maximum prison term for that crime. By law, backlogged cases must be resolved by 2006.

Juveniles. Young people are considered adults at age eighteen. The Honduran prison system does separate juveniles from adults in prisons and houses them in separate facilities. The Honduran government operates four sites: one for girls at Tamara and three for boys at Tamara, San Pedro Sula and another near Tegucigalpa for a total of 399 imprisoned children. Casa Alianza reported that the Honduran government responded quickly to complaints of minors in adult prisons and no longer routinely held juvenile offenders in adult prisons.

Death Penalty. Honduras does not have a death penalty. Honduras is abolitionist for all crimes.

PRISON SYSTEMS

Structure. There is only one national prison system under the management of the Secretary of Security with 24 prison facilities throughout Honduras. 63.5% of the 11,589 total prisoners were pre-trial detainees (figure does not include pre-trial detainees in police jails) in 2005. This is a 15.1% decrease in pre-trial detainees in prison from 2002 although the overall percent is still high. Pre-trial detainees and sentenced prisoners are often housed together.

Standards. There are statutory prison standards, and these rules are enforced by the Secretary of Security. There seems to be little political will to enforce them, and extreme difficulty in applying them to prison sites most of which are overcrowded. In 2004, the International Centre for Prison Studies gave the occupancy level (based on official capacity) at 123.7%, but other sources place it at about double occupancy.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Prisoner Abuse. The Constitution prohibits torture and other cruel treatment. Prison conditions, however, are harsh and prisoners suffer from overcrowding, malnutrition and a lack of adequate sanitation.

Prison disturbances occurred throughout the new century in the San Pedro Sula, Tegucigalpa, La Ceiba, Choluteca and other prison facilities. Many of those prisoners killed during these disturbances were young people aged 18-23 years. Some reports by human rights organizations refer to these disturbances as massacres and social cleansings, since many of the youth were labeled gang members. Prison riots, rebellions and fires have occurred over the past 5 years throughout many of the prisons across Honduras. As many as 108 prisoners were killed in the prison fire at San Pedro Sula in 2004 mostly because the authorities could not find the keys to unlock the cells.

Violence earmarks relationships between guards and prisoners. At El Porvenir prison in 2003, 68 prisoners were executed by state police, soldiers, and prison guards as no weapons were found among the prisoner victims. Bishop Emiliani of San Pedro Sula referred to the deaths at El Porvenir as assassinations.

SERVICES FOR INCARCERATED PERSONS

Health Care. Honduran prisoners receive less than adequate services and sometimes are at greater risk for certain infectious diseases. Honduras has the 5th highest TB case notification rate in Latin America and the highest number of HIV/AIDS cases in Central America, although this HIV/AIDS population is concentrated primarily along the northern coast of Honduras. There is a higher than average incidence of HIV/AIDS and TB in Honduran prisons.

According to a GORGAS TB study, TB is approximately 18 times higher than the civil sector and HIV infection among TB cases is 17% vs. 8% among the general population. The Honduran Health Ministry study of 2000 prisoners in the year 2000 showed that 6.8% of these prisoners were HIV positive and that figure is five times the national average. Many non-infected prisoners are at higher risk for TB and HIV infection because of overcrowded conditions and malnutrition which are risk factors for TB and HIV/AIDS. TB can be transmitted through casual contact and both diseases do not show their tell tale signs until the diseases have progressed. Prisoners can contract these diseases and not know they have them and infect others when they return to society.

Honduras spends approximately 9 lempiras (\$.48 US) a day on food and medicine for each prisoner. The State of Honduras has participated in international workshops and training programs aimed at increasing knowledge of TB and NTP (National TB Program) guidelines among medical students and medical doctors. Importantly, this WHO (World Health Organization) project has integrated the Honduran prison system into the NTP and provided training programs to prison staff and facilitated the implementation of DOTS (a detection test for TB using sputum) in 17 prison facilities. This project has done much to raise TB awareness among prison staff and prisoners resulting in the creation of isolation wards, provision of food supplements, and assignment of health staff to prisons by the Ministry of Security. There is a system of evaluation and data collection in place. The Comayagua prison participated in a Canadian Red Cross prevention program aimed at teaching prisoners what AIDS is and what can be done to prevent it. The use of condoms was taught as part of the program. Police jails

suffer from poor sanitation as well as inadequate medical services. Some jails are small and have buckets in front of each cell: one for potable water; the other, human waste.

Rehabilitation Programs. Most of the 24 prison facilities are state farms growing beans and grains. Others offer basic literacy but little else in educational opportunities. Some facilities have basketball courts while others allow soccer.

RIGHTS OF INCARCERATED PERSONS

Voting. Voting rights of pre-trial detainees and sentenced prisoners are suspended during their incarceration and are not automatically restored upon release. Voting rights can be restored, but the Honduran Supreme Court has set certain conditions that must be met before these rights are reclaimed by ex-offenders returning to society.

Visitation. Visiting occurs on a regular basis and prisoners' families and friends are allowed to bring food and clothing. In many cases prisoners rely on outside help to survive, since the prison system does not provide adequate food nor sometimes even mattresses. Male prisoners with money routinely buy private cells, decent food, and permission for conjugal visits.

The State of Honduras does not provide transportation to the facilities. Male prisoners who can afford to pay for permission have conjugal visits, however, female prisoners do not have conjugal visit privileges.

SOURCES:

<HOPEeternal.com> Dr. Rod Smith in an e-mail to Eileen Kennedy U.S. Department of State Honduras Country Reports on Human Rights Practice-2004 (2005)

U.S. Department of State, Honduras, Country Reports on Human Rights Practices-2004 (2005)

Amnesty International Honduras Report (2005)

International Centre for Prison Studies (2005)

Central American University, Revista Envio, "Has 'Social Cleansing' of Gang Members Spread to Honduran Jails?" (2003)

New York Times, "Cover-Up Found in Honduras Prison Killings" (2003)

Amnesty International Honduras Report (2005)

Phone call to the Honduran Embassy in Washington, D.C. (2006)

gorgastb@uab.edu > GORGAS TB initiative "Collaborative Project for the Strengthening of TB Control Strategies in Honduras (2003)," Canadian Red Cross, "Taking the Fight Against AIDS to the Honduran Prison System" (2004).



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, 1948.

Jamaica



CRIMINAL JUSTICE

Indigents. In Jamaica, there is a system for providing counsel to indigent defendants. Legal Aid attorneys are available to defend the indigent, except those charged with certain offenses under the Money Laundering Act or Dangerous Drugs Act. The Public Defender may bring cases for persons who have had their constitutional rights violated. The Public Defender's Office contracts private attorneys to represent clients; however, at times funds have been insufficient to meet the demand, and attorneys sometimes requested payment from clients.

Juveniles. The Constitution prohibits the incarceration of children in adult prisons; however, in practice, some juveniles under the age of 18 are held with adults because juvenile facilities are overcrowded and do not have beds available when required. There are rules in place to limit the amount of time that juveniles can spend in adult detention facilities. Jamaica has recently passed the Childcare and Protection Act to bring the country into compliance with the Convention on the Rights of the Child which they have signed and ratified. This includes the requirement to make detention of children a measure of last resort.

Death Penalty. Murder is a capital crime, except for pregnant women, persons over 70 years of age and those who committed crimes when under eighteen years old.

The last hanging in Jamaica took place in 1988. There are currently 60 people on death row. Jamaica is a British Independent Territory that retains the death penalty, but for which the Judicial Committee of the Privy Council is the final court of appeal. In 1993, the London-based Privy Council decided that five years on death row constituted unusual and inhumane punishment. It ordered their sentences commuted to life imprisonment, thus establishing a five-year limit for prisoners on death row. The UK Privy Council struck down the mandatory death penalty for murder in Jamaica on July 7, 2004, winning a reprieve for more than 60 prisoners on death row. The Judicial Committee of the Privy Council found that the 1992 Offences Against the Person Act, which introduced the mandatory death sentence for capital murder was inconsistent with section 17(1) of Jamaica's constitution. According to the Law Lords, any death sentence passed since the Act was introduced in 1992 must be held to be illegal. This meant that all those condemned to death following that date had to have their case returned to the Supreme Court for sentencing.

Jamaica does not have sentences of life without possibility of parole. All prisoners have the possibility of review of their sentences, though prisoners serving life sentences who are paroled will remain on parole for the rest of their lives.

PRISON SYSTEMS

Structure. There is one prison system holding 4825 prisoners (end of 2005), of whom less than 17% are pre-trial.

Standards. The 1985 Corrections Act included provisions governing standards and allows for inspection of correctional institutions by the Commissioner of Corrections. In general the government allows private groups, voluntary and religious organizations, local and international human rights organizations, and the media to visit prisons and monitor prison conditions.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. There are written regulations governing prisoner behavior and proscribed punishments for different infractions. Prisoners can appeal their punishment to the Corrections Commissioner.

Prisoner Abuse. Jamaica has signed the major international conventions and their laws prohibit torture and other cruel, inhuman, or degrading treatment or punishment. However, reports of physical abuse of prisoners by guards continue, despite efforts by the Government to remove abusive guards and improve procedures. There were also credible reports that police abuse detainees in custody. Reports from human rights bodies complain that prison conditions are often poor with overcrowded and unsanitary conditions.

The homophobic culture of Jamaica can lead to abuse in prison. Male prisoners deemed by prison wardens to be homosexual are held in a separate facility for their protection. There have been numerous reports of violence against homosexual prisoners, perpetrated both by the wardens and by other prisoners.

SERVICES FOR INCARCERATED PERSONS

Health Care. There are medical officers responsible for healthcare in prisons, but human rights groups report that medical care is often inadequate and that diets are poor.

Rehabilitation Programs. There are vocational and work release programs available. Recently, computer labs have been established in some facilities so prisoners can learn computer skills prior to release.

Reentry Programs. The Criminal Records (Rehabilitation of Offenders) Bill and the Corrections Act were enacted on December 2, 1985. The act established gainful employment programs for prisoners, and pre-release and after-care hostels for the rehabilitation and social integration of prisoners.

RIGHTS OF INCARCERATED PERSONS

Voting. Pretrial prisoners and prisoners serving sentences of less than six months are allowed to vote.

Visitation. Families can visit and prisoners rely upon family and friends to supplement their diets, provide clothing, and supply personal care and hygiene items. While officials have expressed support for the idea of conjugal visits in recent years (in part to stem the spread of HIV-AIDS), the plans have not been put into effect, as the current commissioner claims that facilities are inadequate.

In general the government allows private groups, voluntary and religious organizations, local and international human rights organizations, and the media to visit prisons and monitor prison conditions, and such visits took place during the year.

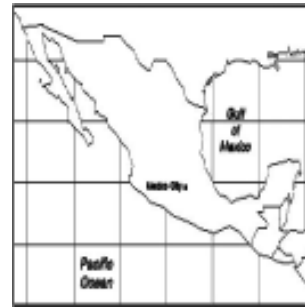


Article 8.3 A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

American Convention on Human Rights, 1969.



Mexico



CRIMINAL JUSTICE

Indigents. If no private attorney is available, a public defender is appointed (Constitution, Article 20, Section IX). At the federal level, public defenders are attached to the Public Defenders' Federal Institute (independent of the federal courts). At the state level, especially in Mexico City, public defenders are part of the Legal Services General Office. In Mexico City, they are attached to the Federal District government's Advisory and Legal Services office. However, information found at www.state.gov states that the public defender system does not work. (a) Pre-trial detainees do not have immediate access to an attorney, nor any private discussions when they are available. (b) public defenders often represent multiple clients simultaneously (the public defender shows up in the court to go on record, but then leaves). (c) No autonomous public defender services. (d) Indigenous defendants often have no translator (although law provides for one).

Juveniles. Juveniles are from 11 to 18 years old, and are held in custody outside of the prison system. In 15 States, youths ages 16 to 18 are eligible for punishment as adults. According to information at www.state.gov, there are 54 juvenile reformatories in the country and many include dormitories with metallic mesh that resembles cages.

Death Penalty. According to an amendment made to Article 22, the death penalty is prohibited in Mexico. The death penalty has not been used since 1937. Sentences have a maximum and minimum for each crime, but no mention of life without parole.

PRISON SYSTEMS

Structure. Mexico has separate federal (national) and state prison systems. Pre-trial prisoners and sentenced prisoners are housed in separate facilities. As of April 2005, 201,931 inmates were held; this does not include juveniles (2532). Out of the prison total, 41% or 82,791 are pre-trial detainees.

Standards. There are written prison standards. There are internal accountability offices within the penitentiary system's administrative structure. They are responsible for investigating misconduct by penitentiary officials. Also, human rights commissions investigate issues of inadequate treatment. The Mexican Constitution's Article 18, Paragraph 2, establishes principles for work, training and education. The Federation and Federal District have established wages according to work and education, as rehabilitation treatment. Prisons provide free medical care.

According to information at www.state.gov, prison conditions are bad, especially in rural, poorer States. Abuses include inmates having to purchase food and medicine, coercion, violence, drugs and arms trafficking, bribery, and lack of control by officials to the point that inmates were exercising authority over them. Problems are especially bad in local and municipal jails.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Mexico does have written rules and regulations governing prisoner behavior. According to the Regulation of the Federal Centers for Social Readjustment, all rules regarding behavior of prisoners will be strictly followed in order to preserve order. Authorities will only be allowed to use force under extreme circumstances. According to chapter XI, when the rules established are violated, the resulting consequences are established as:

- I. Private reprimands
- II. Public reprimands
- III. Partial or total suspension of stimulation
- IV. Change of dormitory
- V. Suspension of their family or intimate visits for a determined period of time
- VI. Relocation to the section of special treatment according to the Manual of Disciplinary Stimulation

Prisoner Abuse. According to Human Rights Watch (12/08/04), torture may be endemic in the system; there were 588 documented cases between 1990 and 2003.

SERVICES FOR INCARCERATED PERSONS

Health Care. Free health care is mandated to be provided to inmates (see Standards, above).

Rehabilitation Programs. Work and education are mandated to be provided to inmates; however, no mention of recreation programs has been found to date (see Standards, above).

Re-entry Programs. Having a “profession, occupation, job or an honest source of income” is taken into consideration when a conditional release under parole is being considered.

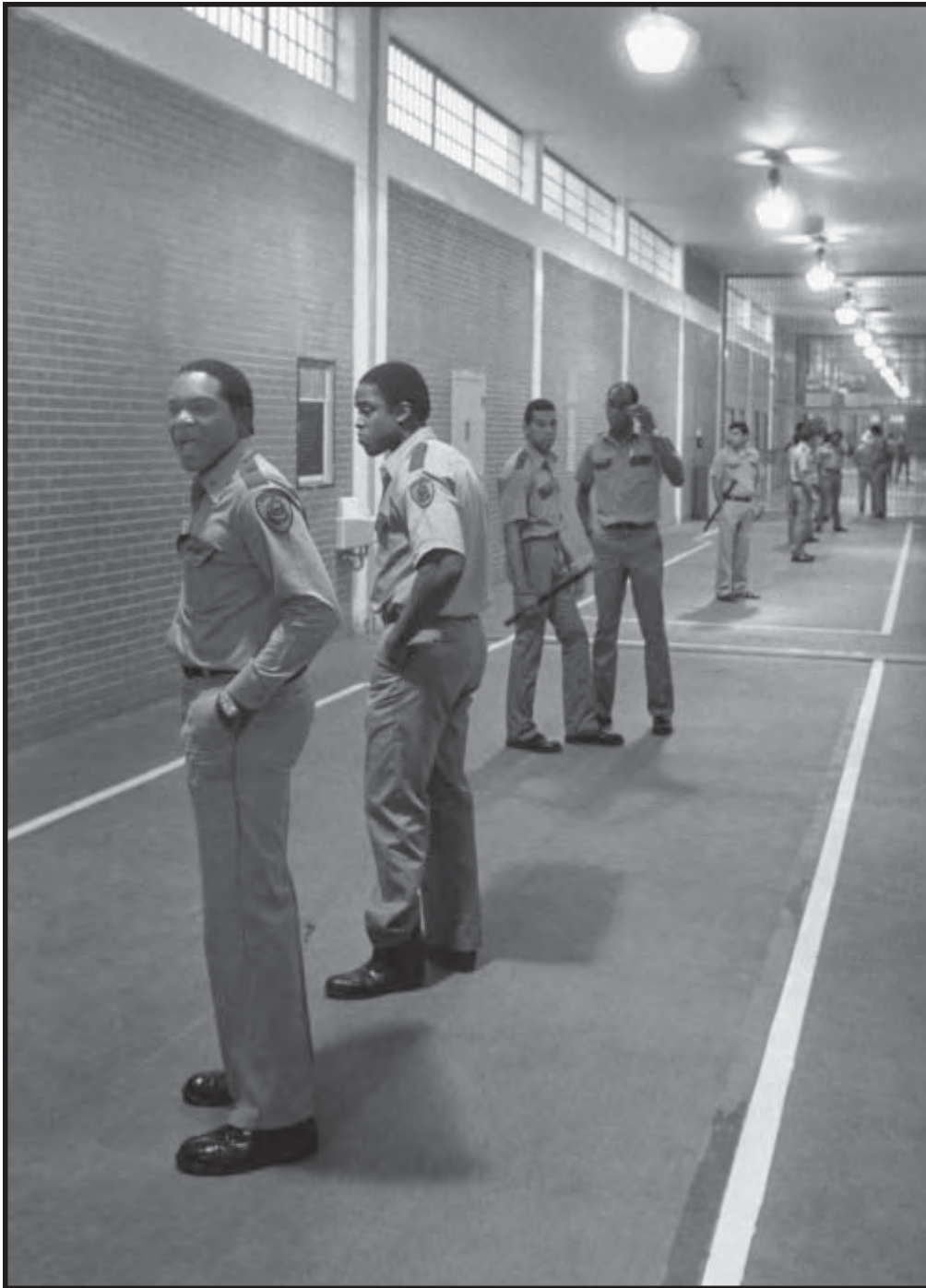
RIGHTS OF INCARCERATED PERSONS

Voting. Incarcerated persons do not have the right to vote. According to Article 46 of the Federal Penal Code, the penalty of prison suspends the political rights of a person.

Visitation. According to Chapter IV of the Federal Regulation of the Center for Social Readjustment, visiting will only be allowed on behalf of friends and family of the intern, authorities, defense team and accredited religious ministers. Family visiting will have as a goal, the conservation and strengthening of the ties between interns and people in the exterior who have family or friendship relations to the intern. Intimate visits are allowed with the purpose of maintaining marital relations in a healthy and moral way, and will be previously analyzed socially and medically. The defense team will have the right to visit their defendant at any time, following the rules established. At any point, the interns have the right to request a suspension or cancellation of their authorized visits. Family and intimate visiting will be allowed only under the dates and times set up by the Regulations.

SOURCES:

<<http://www.state.gov>>
International Centre for Prison Studies
U.S. Dept. of Justice; Bureau of Justice Statistics



Article 7.4 Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

American Convention on Human Rights, 1969.

Nicaragua

CRIMINAL JUSTICE

Indigents. Defendants have the right to legal counsel at their trials. Although indigents are entitled to *pro bono* counsel, public defenders do not exist. In spite of the constitutional right to a speedy trial, arrested persons often spend months in jail before appearing in court. Under the 1991 law reforming penal procedures, jury trials have been restored.



By law a prosecutor must accompany police making an arrest, and detainees have the right to an attorney as soon as they are arrested. Police may hold a suspect legally for 48 hours before they must bring the person before a judge to decide if charges should be brought. The judge then either must order the accused released or transferred to jail. This law was observed more closely than in the past, and few prisoners were held illegally beyond the 48-hour deadline. During the 48 hours, the suspect does not have access to bail or to visits from family members.

PRISON SYSTEMS

Structure. According to government statistics, there were 5589 inmates in prisons designed to hold 5446 prisoners. Some prisons and police holding cells were significantly overcrowded and lacked proper sanitation. The Managua women's prison, with a capacity of 110, reportedly held 170 prisoners in July. International donors and the United Nations Development Program (UNDP) worked with the police to improve conditions in holding cells.

Statistics from the Department of Prisons indicated that 16 percent of all prisoners awaiting final verdicts were pretrial detainees, compared with 26 percent in 2002.

The only separate prison for women was in Managua. In the rest of the country, women were housed in separate wings of prison facilities and were guarded by female custodians. Juveniles were housed in separate prison wings and were on different schedules than adults for mealtime and recreational activities.

Standards. A report issued by a human rights group in 1992 described conditions in the national penitentiary system as "disastrous." The report accused the government of inexcusable indifference because it failed to allocate adequate funds. The prisoners were described as suffering from lack of food, clothing, medicine, and medical treatment. Cases of malnutrition were found as well as contaminated water. Although physical abuse in the penitentiaries was rare, a high percentage of prisoners complained of torture and mistreatment in police detention cells.

The quality of prison food remained poor, and malnutrition remained a problem in local jails and police holding cells. Prison officials calculated that the daily expenditure per prisoner for food was approximately \$0.55 (9.2 cordobas). Many prisoners received additional food from visitors. Conditions in jails and holding cells remained harsh. Many holding cells were dark, poorly ventilated, unhygienic, and overcrowded. Suspects regularly were left in holding cells during their trials, because budgetary shortfalls restricted the use of fuel for transfers to distant courtrooms. At the Bluefields jail, there were 2 showers and 4 toilets for more than 100 prisoners. The authorities occasionally released detainees when they could no longer feed them.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Prisoner Abuse. Torture and other cruel, inhuman, or degrading treatment or punishment are prohibited by law, but there were credible reports that some police physically mistreated detainees, particularly to obtain confessions. The IG's office reported receiving 480 complaints of human rights violations by police officers during the first half of the year, including unlawful killings, and complaints forwarded by the Office of Civil Inspection for Professional Responsibility. The IG's Office found that 126 complaints had merit. The IG's office punished 204 officers for violating human rights.

SERVICES FOR INCARCERATED PERSONS

Health Care. The prison system remained underfunded, and medical supplies ranged from inadequate to nonexistent. For the country's 8 penitentiaries and 5,589 prisoners, the authorities maintained a staff of 28 medical specialists. Prison authorities reported that 30 percent of prisoners slept on metal bunks or mattresses on floors. A study carried out during the year by the authorities of the National Penal System (SPN) revealed that for each of 431 prisoners with serious mental and physical illnesses, the prison system had an average budget of \$.18 (3 cordobas) per month to purchase medicine.

RIGHTS OF INCARCERATED PERSONS

Voting. Nicaragua is not in the Rottinghaus list of countries that permit its prisoners to vote.¹

Visitation. The government permitted prison visits by local and international human rights observers, and such visits took place during the year.

SOURCES: ¹ <www.sentencingproject.org/pdfs/rottinghaus.pdf>



Article 5.4. 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.

American Convention on Human Rights, 1969.

Panama



CRIMINAL JUSTICE

Indigents. There are three ways of helping the accused who have no funds to pay for legal counsel: 1). Defensoria de Oficio del Organo Judicial (Official Defense Dept. of the Ministry of Justice); 2). Defensoria Del Pueblo (City Ombudsman); 3). Centro de Consultas Populares en algunas universidades. (In some universities there are groups which aid prisoners for free).

In Panama there is a system in place for indigent defendants. However, it is hopelessly ineffective and overburdened. Indigent prisoners receive very poor counseling because of the severe shortage of public defenders and the time available for those that are working.

Juveniles. At age 18 young people are considered adults for the purposes of the criminal justice system. Juveniles are kept separate from adults in prisons. There are separate prisons for juveniles.

Death Penalty. Panama does not have a death penalty or sentences of life without possibility of parole. Maximum sentence for any crime is 20 years.

PRISON SYSTEMS

Structure. The country does not have separate federal (national) and state prison systems. The only segregation of prisoners is by sex. The sentenced are mixed with those waiting for justice. Total prison population: 11,350. Sentenced: 4645. Waiting for justice: 6705. The percentage of pre-trial prisoners is approximately 65 percent.

Standards. There are written prison standards but they are not adhered to.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Each prison has written rules and regulations governing prisoner behavior, but they are not generally made known to the prisoners. They are enforced by guards without equitable enforcement. Prisoners are able to make complaints to the central prison authority. However, in practice, nothing will be accomplished.

Prisoner Abuse. Panama does not expressly prohibit corporal punishment, torture, dark cells, or any other cruel, unusual or degrading treatment. There is no prohibition of anything. Corporal punishment is allowed; cruel and unusual punishment is allowed; and degrading treatment is practiced.

SERVICES FOR INCARCERATED PERSONS

Health Care. The prisons do not provide adequate health care for prisoners. This is a tremendous shame as prisoners die in captivity because no health care is given in most cases. Prisoners at La Joyita and La Joya who get sick in the night do not get taken to see anyone for

treatment until morning hours. It is possible that medical attention is given if the prisoner is lying on the floor and fellow prisoners beat on the iron bars and scream long enough.

Rehabilitation Programs. Prisons generally do not have work, education and recreation programs, except at one prison – El Renacer.

Reentry Programs. Prisons normally do not have any programs for pre-release or re-entry assistance for prisoners, but there has been some experimentation at one prison – El Renacer.

RIGHTS OF INCARCERATED PERSONS

Voting. Pre-trial and/or sentenced prisoners do not have the right to vote. Voting rights are restored automatically upon release.

Visitation. Visiting arrangements vary from prison to prison. This can be from 20 minutes every two weeks – to weekly- and there are provisions for obtaining frequent special visits for certain circumstances such as foreign family visits. The state does not provide transportation to and from the prisons. In only one prison (El Renacer) do conjugal visits exist. Bribery helps to achieve conjugal visits for those who are not married.



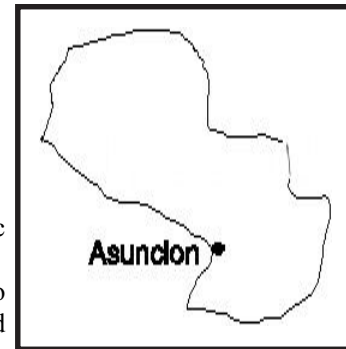
Article 3. Every person has the right freely to profess a religious faith, and to manifest it and practice it both in public and in private.

American Declaration of the Rights and Duties of Man, 1948.

Paraguay

CRIMINAL JUSTICE

Indigents. The Paraguayan Constitution provides for public defenders (Article 17, Clause 6) for the indigent population. Due to budgetary constraints, the government is unable to fulfill this requirement and many poor defendants are still tried without benefit of counsel.



Juveniles. Those held in prison up to the age of 20 are considered to be minors. As of the 2005 U.S. State Department report, minors are generally kept separate from adult prisoners within the prison system.

Death Penalty. Paraguay does not have capital punishment (Article 4 in the Constitution). There have been no legal executions since the constitution was adopted in 1992. They do not have sentences of life without possibility of parole.

PRISON SYSTEMS

Structure. Paraguay is a unitary government, and all available data shows only national prison data. There are currently 12 prisons operated by the government, Tacumbu - the largest prison and located in Asunción - and 11 other regional prisons. Pre-trial detainees (preventive imprisonment) are constitutionally required to be kept in separate facilities from convicted offenders (Article 21 of the Constitution). As they make up between 75 and 92% of the prison population, this is not always possible, but it is generally the case.

Standards. While there are constitutional and statutory prison standards, overcrowding throughout the prison system makes these unenforceable.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. The Paraguayan Constitution does give every citizen the right to petition the government for any perceived wrong (Article 40).

Prisoner Abuse. All forms of torture and cruel, inhuman or degrading treatment are prohibited by the Constitution. Some prisoners are still subject to being held incommunicado with judicial approval.

SERVICES FOR INCARCERATED PERSONS

Health Care. Article 65 of the Paraguayan Constitution requires that prisons be a healthful environment dedicated to the rehabilitation of prisoners. However, due to the overcrowding (Paraguayan prisons are at 151% of capacity nationwide), the accompanying health problems caused by overcrowding and a shortage of medical care, it is believed that this need is not being met. No definitive study has been accomplished in the last 10 years.

Rehabilitation Programs. Programs throughout the Paraguayan Prison system provide rehabilitative training. For men and juveniles, it is in skills which allow them to gain employment

once their sentence is completed. For women, it is in the domestic sciences. Again, it is the stated goal that prisons are intended to rehabilitate and reform offenders.

Reentry Programs. Other than training in a marketable skill, there are no re-entry programs such as half-way houses.

RIGHTS OF INCARCERATED PERSONS

Voting. There are no provisions for suspending the right to vote for any citizen over the age of 18 residing in the national territory (Article 120).

Visitation. Inmates are allowed regular visits from family members, including conjugal visits.



Article 12. Every person has the right to an education, which should be based on the principles of liberty, morality, and human solidarity.

Likewise, every person has a right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society.

The right to an education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide.

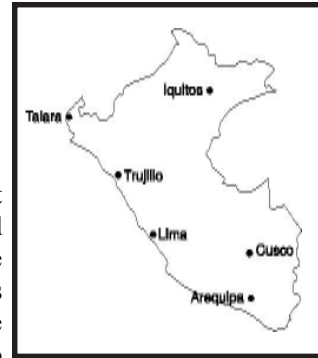
Every person has the right to receive, free, at least a primary education.

American Declaration of the Rights and Duties of Man, 1948.

Peru

CRIMINAL JUSTICE

Indigents. According to law, each detained person has the right to ask to be defended by a lawyer of his choice. If the detained person is illiterate or if he is a minor, a defendant lawyer will be assigned ex officio. In case the detained does not have the means to pay for a lawyer, the State will provide one, paid for by the Ministry of Justice. Generally, inmates complain about their pro bono lawyer as being uninterested in their case, and unprepared to take up a serious defense.



Juveniles. A person is considered to be liable for a criminal process from the age of eighteen upwards. There have been laws which lowered criminal responsibility to 16 years in cases of terrorism or gangs, but these have been derogated, or, de facto, they are not applied anymore.

Normally no juveniles should be in an adult prison. If they are there by error, they have to be transferred to a juvenile facility. Juvenile facilities are different from the prison system and depend directly on the Judiciary Power. There was a period when juveniles were kept in a separate zone of adult prisons, but that is not the case anymore.

Death Penalty. The death penalty has been abolished, with the exception of treason in time of war. No death sentences or execution have taken place in decades.

Life sentence without any possibility of parole used to exist. Now, the Constitutional Court has decided that a life-sentence must be “evaluated” after 35 years, which means that at that point, the life sentence could be revoked.

PRISON SYSTEMS

Structure. Peru has one national prison system, under the control of the National Penitentiary Institute (Instituto Nacional Penitenciario), which depends on the Ministry of Justice. Prison management is organized in 8 regions. The Lima region hosts more than half of the prison population. Some prisons have a special status, as the one that hosts maximum security prisoners sentenced for terrorism or corruption, as for example the Naval Base of Callao. These facilities have a special and exclusive treatment status. However, these facilities contain less than 1 % of the total prison population.

The distribution of pre-trial and sentenced prisoners these last years has usually been according to a two third / one third basis. Pre-trial and sentenced prisoners usually sleep and live together in small prisons. In larger prisons, they are kept in separate units during the night, but during the day they are usually mixed together.

Standards. The Code of Penal procedures indicates in its Preamble Article X that “the Penitentiary system receives the dispositions, conclusions and recommendations of the United Nations for the Prevention of Crime and Treatment of the Criminal,” but no standards are published and no Board is charged with following up. The only instance is the Defensoría del Pueblo, which regularly visits prisons and eventually asks for information from the National Prison Board (INPE). The International Committee of the Red Cross also visits prisons on a

regular basis, but its reports are not public, since they are sent directly to the National Prison Board (INPE).

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. The law presents certain general rules on prisoner's rights and duties. Normally each prisoner should be informed of these rules, but this is not always the case. The Defensoría del Pueblo has edited a brochure with the main rules, rights and duties, but its distribution has met with some difficulties. According to law, the prisoner has the right to make complaints to the prison director, to the Prosecutor, or to the Defensoría del Pueblo. However in practical terms, this is not so easy as all written documents are controlled as they leave the prison.

Prisoner Abuse. According to law (Constitution and specific laws as Law 26926) torture, corporal punishment, and other cruel or inhumane treatments are prohibited. However, dark cells exist in nearly every prison. Sometimes cruel treatment does occur.

SERVICES FOR INCARCERATED PERSONS

Health Care. All inmates have the right to have their health protected by the prison system, but in fact the prison continues to be a very unhealthy place to live. Although, in the last two years some improvements have been made and some more funds have been available, the situation still is poor: medical personnel are insufficient, hospitalization is limited, many contagious illnesses prevail, and food conditions remain poor.

Rehabilitation Programs. In principle, work has to be provided to the inmates. However, the major part of the ones who work in prison do it based on personal initiative and with their own resources.

Education is provided in most prisons, at least at primary and technical level. In large prisons, teachers from the Education Ministry hold classes. In some prisons volunteers also have education programs, in coordination with the prison authorities. In Lima, some prisoners are permitted to follow some kind of higher education by correspondence. In those cases, teachers come to the prison to give the exams. However, this practice is very limited and cannot be considered as general nor national.

Recreation programs are mostly limited to sport events and occasional contests. The inmates many times organize their own football contests, as well as literary contests.

Reentry Programs. Specific pre-release or re-entry programs on a nation-wide basis do not seem to exist. In some prisons, the prison personnel or volunteers take some initiatives regarding release, but these remain limited. When prisoners are on parole, there are programs to help them.

RIGHTS OF INCARCERATED PERSONS

Voting. According to the Peruvian Constitution, each national who has not been sentenced, has the right to vote. This means that only sentenced prisoners cannot vote. This also means that when a prisoner leaves prison, having done his whole sentence, he is automatically enabled to take part again in elections. However, in practice, at least these last 20 years, no prisoners at all have participated in an election process, as neither the National Penitentiary Institute, nor

the National Election Board (ONPE) has ever implemented voting facilities in prisons, not even in prisons where all inmates are in a pre-trial stage. When a prisoner leaves prison, he will be able to vote again, once he has done all his sentence and once he has gotten hold again of his personal identity papers.

Visitation. According to law, normally each inmate has the right to communicate and receive visits. Usually visits are according to sex; that is, one day women may visit inmates, and another day men may do the same. Normally visits are during week-end. Unless the judge decides otherwise, there is no restriction on the number of persons or the type of visits an inmate may receive. Children must always be accompanied by an adult. Special visit arrangements exist e.g. in cases of intimate visits between spouses, of which at least one is in prison.

No transportation or any other service is provided by the state. When an inmate is transferred from one prison to another, according to law he/she should have the possibility to inform his/her family and/or lawyer. In practice this does not occur, which can cause some problems when people travel to visit a prisoner and find out he is not in that prison anymore.



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, 1948.



Saint Kitts and Nevis

CRIMINAL JUSTICE

Indigents. Free legal assistance was available for indigent defendants in capital cases only. The law requires that persons detained be charged within 48 hours or be released. If charged, a detainee must be brought before a court within 72 hours. There is a functioning system of bail.

Juveniles. Juveniles worked in agriculture, domestic service, and illicit activities. Such labor included family-oriented work where children were made to look after younger siblings or ailing parents and grandparents at the expense of their schooling.

The law sets the age of consent at 16. Authorities brought charges in 22 cases involving alleged sexual activity with minors (statutory rape) and 5 cases of incest (which includes sexual activity with any member of the household) in 2004, the most recent data available.

Death Penalty. Saint Kitts and Nevis does have the death penalty.

PRISON SYSTEMS

Structure. There were 28 prisoners in pretrial detention and 29 awaiting a court hearing at year's end. Detainees may be held for a maximum of seven days awaiting a bail hearing. Those accused of serious offenses are remanded to custody to await trial, while those accused of minor infractions are released on their own recognizance.

Standards. Prisons were overcrowded, and resources remained limited. The prison on Saint Kitts had a capacity for 150 prisoners but held 180 prisoners at year's end, including 5 females; some prisoners slept on mats on the floor. A low-security prison on Nevis held 29 inmates. The prison staff periodically received training in human rights.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Prisoner Abuse. Corporal punishment is legal; a court can order that an accused person receive lashes if found guilty.

SERVICES FOR INCARCERATED PERSONS

Rehabilitation Programs. Prisoners were required to work if their sentence was more than 30 days and stipulated “hard labor.” They received a small stipend for this work, paid upon discharge.

RIGHTS OF INCARCERATED PERSONS

Voting. Saint Kitts and Nevis are not in the Rottinghaus list of countries that permit its prisoners to vote.¹

Visitation. Family members, attorneys, and clergy were permitted to visit detainees regularly.

SOURCES: ¹ <www.sentencingproject.org/pdfs/rottinghaus.pdf>



Article 13.1 Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

American Convention on Human Rights, 1969.

Saint Lucia



CRIMINAL JUSTICE

Indigents. There is no public defender system currently in place. The prisoners are only given time and adequate access to the law to prepare for their case, but they must be able to pay for legal representation.

Juveniles. Their citizens become adults at age 18 and they do have separate facilities for juveniles and adults.

Death Penalty. There is a death penalty although there have been no executions since the Grenadine war.

PRISON SYSTEMS

Structure. St. Lucia's prison system is similar to the British prison system since Great Britain controlled the island until it became independent in 1979. The country does not house prisoners in different places because of their offenses. Once a person is duly convicted, they are subjected to imprisonment.

Standards. Prison system conditions generally meet minimum international standards at the 2-year-old Bordelais Correctional Facility, which has a capacity of 500 prisoners and holds approximately that number of prisoners.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. The prisons have written rules and regulations which govern them and which establish the rules for the orderly running of the prison. There is a grievance procedure for prisoners who wish to make complaints for deprivation of their human rights.

Prisoner Abuse. Pursuant to their constitution, torture, corporal or other degrading punishment is prohibited. The press reported that an attorney complained to the judge during a sentencing proceeding that guards had beaten clients of his who were prisoners at Bordelais prison. Also the press reported allegations that guards severely beat a prisoner who was left in his cell unconscious and denied medical treatment for several days. The attorney who heads the National Center for Legal Aid and Human Rights charged that 10 prison guards had beaten the prisoner, and called for the government to investigate a "culture of torture and inhumane treatment of inmates." The government denied that such a situation existed.

RIGHTS OF INCARCERATED PERSONS

Voting. While prisoners remain in prison, they are allowed to vote if they retained registration prior to their incarceration.¹

Visitation. Prisoners are allowed visits with family members, but no special visits are arranged.

SOURCES:

¹ <www.sentencingproject.org/pdfs/rottinghaus.pdf>

Article 5.2 No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

American Convention on Human Rights, 1969.



These two men have been exonerated.

Article 10: 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.

Article 11: Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

United Nations Declaration of Human Rights, 1948.

Saint Vincent and the Grenadines

CRIMINAL JUSTICE

Indigents. The country does have a public defender system to represent people who are poor. Based on the person's ability to pay for representation, they will either be represented by some well known lawyer on the island or they are given an opportunity to be represented by a lawyer appointed by the government.

Juveniles. A person is considered an adult when he/she reaches 18 years of age. Juveniles are kept separately from adults. However, a family court handles criminal cases for minors up to age 16. Children may be charged and convicted as criminals from the age of 16. In such cases, children then may be jailed with older criminals. Conditions are inadequate for juvenile offenders.

Death Penalty. St. Vincent does have a death penalty. Within the last three years, there hasn't been any death sentence carried out. There are people in the Grenadines serving natural life sentences in prison.



PRISON SYSTEMS

Structure. St. Vincent and the Grenadines do have separate prison systems for prisoners who commit crimes against the government. The prisoners are kept in the same facilities, but different parts, although the facilities are run the same. There were 13 female inmates held in a separate section in the Fort Charlotte prison.

Standards. Most of the prison standards are adopted from England. The prison then sets policies on how the prison should be governed. Prison conditions are poor. Prison buildings are antiquated and overcrowded, with Her Majesty's Prison in Kingstown holding more than 351 inmates in a building designed for 75. These conditions have resulted in serious health and safety problems. Pre-trial detainees and young offenders (16 to 21 years of age) were held with convicted prisoners, although the government was building a new facility for them and hiring new prison officers at year's end.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Each prison does have a policy governing the behavior of the prisoners. The officers are responsible for enforcing the rules in the prison. Prisoners are able to make complaints within and outside the prison administration. The government established an Oversight Committee to monitor police activity and hear public complaints about police misconduct. The committee reported to the Minister of National Security and to the Minister of Legal Affairs and actively participated in investigations during the year. In September, the Saint Vincent and the Grenadines Human Rights Association (SVGHRA) conducted a seminar on human rights for police cadets.

Prisoner Abuse. Any form of brutality is unacceptable in the prison.

SERVICES FOR INCARCERATED PERSONS

Health Care. Each prison provides medical and health care for the prisoners.

Rehab Programs. Each prison has work and educational programs for prisoners. Also, recreation is provided for prisoners, such as music, singing, and so forth. A rehabilitation program allowed inmates to receive contracts and jobs with local entrepreneurs. A school program offered courses in carpentry, tailoring, baking, and mechanical engineering.

Reentry Programs. The government does have programs to assist people once they are released from prison. There are shelters where people can go to get assistance to help them get back on their feet.

RIGHTS OF INCARCERATED PERSONS

Voting. Generally, prisoners cannot vote while incarcerated. Once a person in the Grenadines completes his sentence, his citizenship is fully restored, and he regains his right to vote.

Visitation. Visits are a little different in the Grenadines. Families are allowed to bring food and eat with their imprisoned family member. Family members can also bring certain permissible items. In certain circumstances, private visiting arrangements are permitted.



Article 5.5 Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

American Convention on Human Rights, 1969.

Suriname



CRIMINAL JUSTICE

Indigents. Detainees are allowed prompt access to counsel of their choosing, but the prosecutor may prohibit access if he thinks that this could harm the investigation. Courts assign private sector lawyers to defend indigent prisoners, paying the costs from public funds. There are, however, just 14 court-assigned lawyers who generally appeared at trial without prior consultation with defendants. According to the watchdog group *Moiwana '68*, these lawyers often do not appear at all. Detainees do have the right to a prompt judicial determination of the legality of their detention, and this is respected in practice.

Juveniles. Young people are considered adults at age 18. In its concluding observations, the UN Human Rights Committee commented, "The Committee is concerned about the compatibility with the Covenant of the low age of criminal responsibility in Suriname (10 years), having regard in particular to reliable information about the ill-treatment of children in detention and the long delays in pending trials."

One source indicates that there are 5 institutions – 3 for adults and 2 for juveniles. Another source indicates there are juvenile facilities for both boys and girls between the ages of 10 and 18 within the adult prison with educational and recreational facilities. It also notes that there is no separate facility for girls under the age of 18; girls are held in the women's detention center and in the women's section of one of the prison complexes.

A separate wing of an adult prison held boys under age 18 who committed serious crimes. Conditions in the separate youth detention center remained inadequate, and prisoners and nongovernmental organizations (NGOs) complained about overcrowding and poor ventilation, physical and verbal abuse by the guards, and unchecked violence among detainees.

Death Penalty. Suriname has de facto abolition of the death penalty; they have not carried out an execution since 1982.

PRISON SYSTEMS

Structure. There are local detention facilities as well as three prisons. In 1999, there were reportedly 1933 prisoners of which 41.4% (800) were pre-trial detainees or remand prisoners.

Human rights monitors expressed concern about conditions in pre-trial detention facilities, which remained overcrowded. A steadily growing number of people who had been convicted, but not yet placed in prisons due to a lack of space in prison facilities, continued to be held in these detention cells. Because of staff shortages, police officers rarely permitted detainees to leave their cells. Detainees and human rights groups also complained about inadequate meals.

Standards. Responders found no report describing written policies and/or standards. Prison conditions were poor. Most facilities, particularly older jails, remained unsanitary and seriously overcrowded, with as many as four times the number of detainees for which they were designed.

Conditions in women's jail and prison facilities were generally better than those in the men's facilities.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Detainees are allowed to file complaints. In 2004, there were 166 complaints filed with the Police Personnel Investigation Department (OPZ), mostly for physical mistreatment. Authorities arrested 18 officers and disciplined 105 for various offenses, including brutality; 19 officers were incarcerated, 32 were suspended, and 5 were fired.

Prisoner Abuse. There are reported cases of police mistreatment of detainees (particularly during arrest) and abuse of prisoners by prison officials. Human rights groups contend that inadequate training of police officers serving as jailers at local detention facilities contribute to the abuses.

SERVICES FOR INCARCERATED PERSONS

Health Care. Health care is poor. Local detention facilities are the worst. Detainees are allowed no exercise and rarely permitted to leave their cells. Meals are inadequate, and due to security concerns, families are no longer allowed to bring food. There is no consideration given for special diets required for religious reasons. Facilities are overcrowded and violence among prisoners is common.

Rehabilitation Programs. There is educational programming for juveniles. We found no reports of programming for adult prisoners. Responder saw no mention of out-of-cell activities or education for prisoners, other than juveniles.

Reentry Programs. There is no bail system. A commission in 2003 recommended renovating all prison facilities and adjusting policies so that those charged with lesser crimes would be released after giving a statement. It does not appear that those changes have been implemented. Responder found no evidence of assistance for those leaving the prison system.

RIGHTS OF INCARCERATED PERSONS

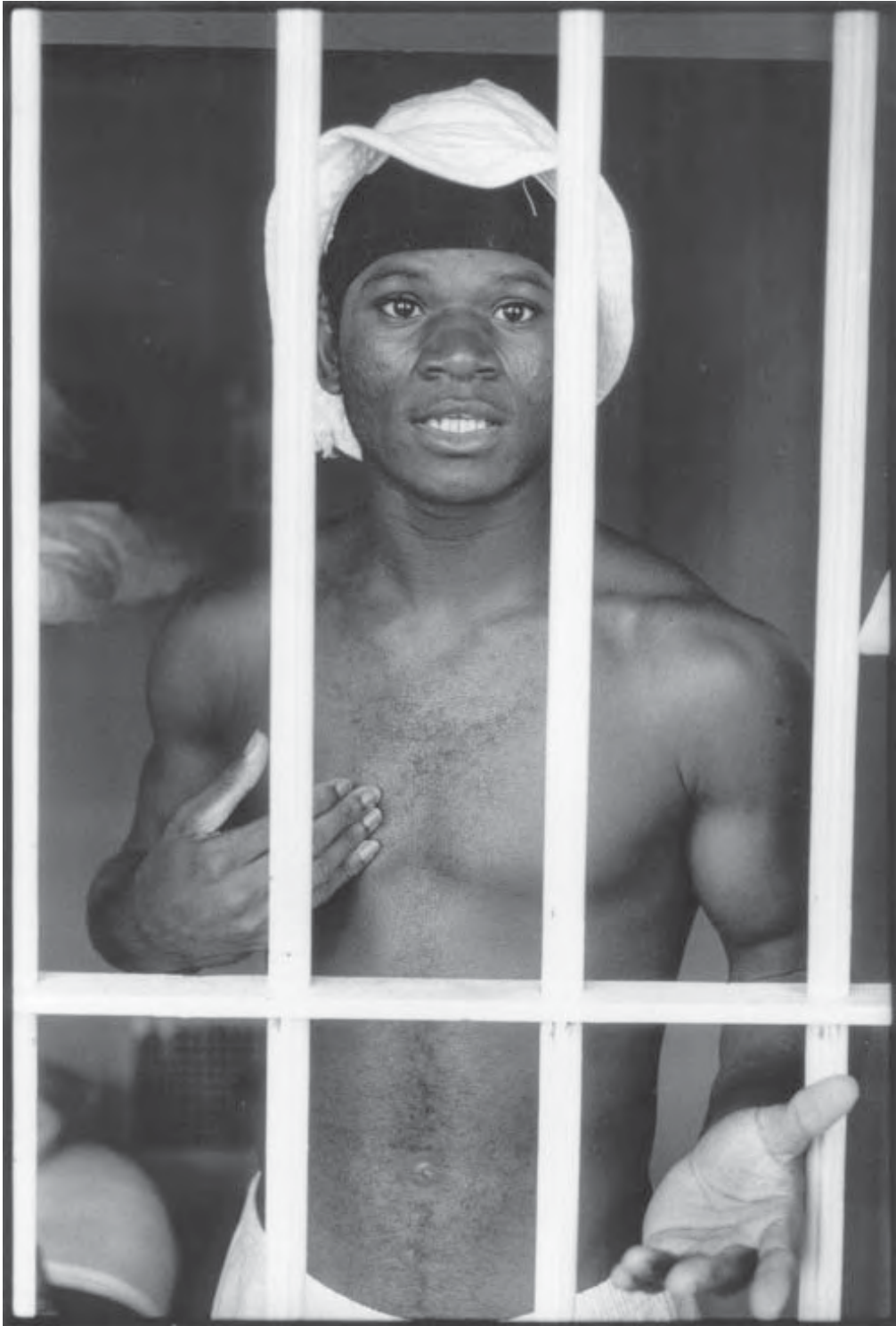
Voting. Suriname is not in the Rottinghaus list of countries that permit its prisoners to vote.¹ Article 58 of the Suriname Constitution reads: "Those persons shall be debarred from exercising the right to vote:

- a. To whom the right to vote has been denied by an irrevocable judicial decision;
- b. Who are lawfully deprived of their liberty;
- c. Who, by virtue of an irrevocable judicial decision, have lost the right to dispose of or administer their property on account of insanity or imbecility."

Visitation. There is some visiting allowed. There was mention of changes to prohibit visitors from bringing in food (for security reasons). The government permitted visits by independent human rights observers. Representatives of the NGO Moiwana '86 group reported that, in general they had access to prisoners and received cooperation from prison officials on routine matters.

SOURCES:

¹ <www.sentencingproject.org/pdfs/rottinghaus.pdf>



*Article 3. Everyone has the right to life, liberty, and security of person.
United Nations Universal Declaration of Human Rights, 1948.*

Trinidad and Tobago



CRIMINAL JUSTICE

Indigents. Inadequate legal aid is provided to prisoners. Criminal defendants in Trinidad and Tobago have a right to counsel, have a right to be present at trial, are presumed innocent until proven guilty and have the right to an appeal of their conviction and sentence. Although all defendants have a right to speak with an attorney in a timely manner, only defendants facing serious criminal charges are provided with an attorney at public expense if they can not afford one. The law requires that people accused of murder be provided with a court-appointed attorney. An indigent defendant who has been appointed an attorney may refuse to accept the assigned attorney and request that another attorney be appointed to represent him/her.

Juveniles. At age 18, young people are considered adults for the purposes of the criminal justice system. There are separate prisons for juveniles.

Death Penalty. They do have a death penalty. The last executions, 10, were in 1999. There are now around 5 on death row. Trinidad and Tobago do not have sentences of life without possibility of parole.

PRISON SYSTEMS

Structure. Trinidad and Tobago only have national prisons. All following figures are from April 2004. Remand and convicted are held separately. Port of Spain (remand and convicted): 900 inmates; Golden Grove Women's Prison (remand and convicted): 111; Golden Grove Remand: 800+ ; Golden Grove Convicted: 500 + ; Carrera (Island) Prison (convicted): 480+ ; Youth Training Centre (remand and convicted): 214; Maximum Security Prison (convicted): 800+. Note: there were plans to move more prisoners to this prison to relieve overcrowding.

Both Human Rights Watch and Amnesty International have noted that Trinidad and Tobago face a very serious problem with lengthy pretrial detention. In 2005, HRW reported that "heavy court backlogs and an inefficient judicial system continued to be a problem." Of the 3730 prisoners confined in prisons, 1573 were pretrial detainees awaiting trial. Although by law detainees had the right to a hearing before a magistrate's court within 10 days, pretrial detainees often waited months, if not years, for their trial dates in the high court. In 2004, HRW reported that, on average, pretrial detainees waited 19 months before going to trial, and some prisoners had not seen an attorney for 3 years or more. As of July 2004 HRW investigators found that more than 17,000 matters remained outstanding before the courts, dating from 1998. Courts handled an average of 35 to 60 matters per day and 11,434 cases per year.

Standards. There are written prison rules, but they date from over 100 years ago. Amnesty International (AI) has investigated conditions in prisons in Trinidad and Tobago over the past few years, and has reported that prisoners have been subjected to substandard medical and sanitary conditions. In a 2004 investigation, AI reported that prison conditions were harsh. "Overcrowding was severe, particularly at the Port of Spain Prison, which held approximately 900 prisoners, although designed to hold only 250 inmates when it was built in 1812." One cellblock observed by AI investigators held 114 prisoners in 10 feet by 10 feet cells, with upwards of 14 prisoners per cell.

The maximum security prison had an intended capacity of 2400 persons but, due to a faulty sewage system and inadequate electronic security, held only 800 prisoners and did little to relieve the overcrowding in the detention system.

However, the government initially focused on reducing overcrowding and improving unsanitary conditions at the Port of Spain prison. According to the newly appointed prison service commissioner, the number of prisoners at this facility was reduced from 900 in 2004 to 650 in 2005. The number of prisoners in each 10- by 10-foot cell also was reduced from a maximum of 14 or more to a maximum of 5. The government also put resources into repainting, better lighting, improved toilet facilities, and more hygienic food service arrangements.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Prisons do not have written rules and regulations governing prisoner behavior. Prisoners are not able to make complaints to the central prison authority. There is an Ombudsman who will take prisoners complaints, but his powers are very limited.

Prisoner Abuse. Corporal punishment, torture, dark cells, or any other cruel, unusual or degrading treatment are not expressly prohibited and are present. Amnesty International found credible evidence that some prisoners and detainees were mistreated by police officers and prison guards. The prison administration itself reported that 36 guards out of a total guard force of 2050 were under suspension and investigation for behavior incompatible with service as a law enforcement officer.

In a 2004 Report on crime and prisons in Trinidad and Tobago, the U.S. State Department echoed conclusions drawn by Amnesty International, indicating that, although the country's existing government "generally respected the human rights of its citizens, ... there were problems in some areas. There were police killings during apprehension and deaths of persons while in custody, poor prison conditions, and reports of police and guard abuse of prisoners. Violence against women remained a problem." The U.S. State department reported that 21 people died during 2004 while in police custody or at the hands of police, and indicated that excessive use of force continued to be a concern.

SERVICES FOR INCARCERATED PERSONS

Health Care. The prison does not provide adequate health care for prisoners. Amnesty International reported that conditions at the prison were extremely dirty and unsanitary. "Illnesses such as tuberculosis, HIV/AIDS, conjunctivitis, and scabies spread easily. Waste for one cellblock was disposed of within 5 feet of the meal preparation area, and there were reports of insects infesting the entire facility." AI concluded that conditions amounted to "cruel, inhuman, and degrading treatment."

In addition, conditions at the maximum-security prison in Arouca and the Golden Grove Remand Center also were poor. On two separate occasions, judges declined to sentence elderly convicts to prison terms, citing the risk of death due to unsanitary conditions and inadequate medical facilities.

Rehabilitation Programs. The prisons have some limited work, education and recreation programs. In spite of this, a 2002 government report on the prison service and the broader criminal justice system recommended transforming the system to focus on rehabilitation.

Progress toward providing adequate employment and work opportunities for prisoners and people reentering the community in Trinidad and Tobago is limited.

Re-entry Programs. There are no known programs for pre-release or re-entry assistance for prisoners.

RIGHTS OF INCARCERATED PERSONS

Voting. In Trinidad and Tobago, pre-trial detainees and prisoners serving less than one year are allowed to vote, and people regain their right to vote once released from prison. In his comprehensive article on “Incarceration and Enfranchisement,” Brandon Rottinghaus classifies Trinidad and Tobago as a country that only restricts prisoners from voting under “special circumstances,” and describes countries in this category as taking a “middle ground approach” to enfranchisement of people with criminal convictions.¹ Of course, as sentencing in Trinidad and Tobago becomes more lengthy in response to punitive sentencing patterns in the United States, the period of effective disenfranchisement for prisoners serving more than one year in prison will increase as well.

Visitation. The prison visiting system is awful. The conditions for visits and the time and frequency permitted for them to take place, are exceptionally poor. In the majority of the prison system, visits are initially limited to 15 minutes, regardless of how far the relative may have travelled. The frequency of visits depends on how long the prisoner has served. A remand prisoner is allowed one visit of 15 minutes every second week. For the first six months of his sentence, a convicted prisoner is allowed one 15 minute visit every 2 months; this is increased to one every six weeks for 30 minutes after six months and one per month for 45 minutes after 2 years.

In Port of Spain Prison and Maximum Security Prison, prisoners were divided from their visitors by glass and internal phones were used to communicate, thereby allowing a degree of privacy. At Golden Grove complex, the visitors’ room, which was used by all three institutions, facilities consisted of two walls, approximately 1 metre apart, behind which the prisoner and visitor would stand, facing each other. They would then converse with each other by speaking through the wire across the divide. There were 12 spaces for visits, with visits occurring simultaneously, thereby necessitating everyone to shout to be heard. This process lacked any privacy and was degrading for all involved.

No prisoners – apart from imprisoned foreigners calling their home country – are allowed to use telephones, thereby further restricting their access to their family. The advantages of having humane visiting facilities have been widely recognised. For example, Martin Narey, Director General of the Prison Service of England and Wales, observed, “A stable, supportive family throughout the sentence is often a key factor in preventing re-offending...I firmly believe that we should do as much as practically possible to sustain family relationships.”² The World Health Organization has pointed out that, “Family and friendship ties are important sources of support and should be prompted. Although imprisonment requires the imposition of some constraints on visits, letters and telephone calls, the conditions surrounding these means of maintaining contact should be kept as normal as possible.”

SOURCES:

¹ <www.sentencingproject.org/pdfs/rottinghaus.pdf>

² “Family Matters”, Prison Report Issue 55, Summer 2001, Prison Reform Trust.



Article 1. The states party to this protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction.

Protocol to the American Convention on Human Rights to Abolish the Death Penalty, 1990.

SIGNATORY COUNTRIES:

Brazil, Chile, Costa Rica, Ecuador, Nicaragua, Panama, Paraguay, Uruguay, Venezuela.



Article 4.2 In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with the law establishing such punishment, enacted prior to the commission of the crime.

American Convention on Human Rights, 1969.

United States



CRIMINAL JUSTICE

Indigents. In 1963, the Supreme Court of the United States held that every person facing a significant criminal prosecution was entitled to a lawyer, and if they could not afford one, the government had to provide one without cost. The federal system has a fairly complete and decent system of federal public defenders who are appointed for those unable to afford a lawyer and who are facing prosecution for federal crimes. The situation in the states is very uneven. Some large cities such as New York, Philadelphia and Washington have excellent public defender programs while in some states like Texas and others there are very inadequate public defender systems. Judges will often appoint elderly, retired and less than competent lawyers for poor defendants. The situation is slowly improving with states like Montana just now beginning a public defender system. In some areas, the public defender system is underfunded and overwhelmed with high case loads.

Juveniles. As of the end of the 2004 legislative sessions, 23 states had no minimum age for the purpose of the criminal justice system, and young children could be treated as adults in those states. 2 states have a minimum age of 10, 3 states have a minimum age of 12, 6 states have a minimum age of 13, 16 states have a minimum age of 14 and 1 state has a minimum age of 15.

There are separate prisons for juveniles, although in some, states, juveniles are kept in the same facilities as adult prisoners, especially if they are awaiting trial. In a 2004 report of the U.S. Bureau of Justice Statistics, they report that 2477 inmates under age 18 were held in state adult prisons. There were certainly more than that number in adult jails.

Death Penalty. In the United States, there is a federal death penalty for a variety of federal crimes and 38 of the 50 states have the death penalty although a few states with the penalty no longer use it. The most recent available data indicates that as of October 2005, there were 3385 men and women under a death sentence. The number of persons executed during the past three years were: 2003–65; 2004–59; 2005–60.

48 of the 50 states and the federal system have sentences of life without possibility of parole. The other two states are New Mexico, which has the death penalty but not life without parole, and Alaska, which has no death penalty and no sentences of life without parole.

PRISON SYSTEMS

Structure. The U.S. does have separate federal and state prison systems. The total jail and prison population at the end of 2004 was approximately 2,300,000 men, women and children in secure facilities. There were approximately 183,000 national (federal) prisoners, and the

balance were in state and local facilities. Some large local jurisdictions have more prisoners than many small countries. Los Angeles has 21,000; New York City, 19,000; and Chicago, over 10,000. Approximately 75% of all prisoners are sentenced, and 25% are awaiting trial. Awaiting trial prisoners and sentenced prisoners with short terms, or waiting for transfer to state facilities, are often in the same facility.

It should be mentioned that the number of prisoners in the U.S. is unique in the world. There are just over 9,000,000 prisoners in the entire world and more than 25% of them are in the U.S.. The U.S. rate of incarceration is the highest in the world.

Standards. There are no federal prison standards other than the vague and general language of the U.S. Constitution, which says in Article VIII, “—nor cruel and unusual punishments inflicted.” It is then left to the courts to decide what that means. A few states have statutory provisions for the treatment of prisoners, but they are rarely observed and more rarely enforced. Between 1970 and 1996, the federal courts served as the watchdog of the U.S. jails and prisons, and through the vehicle of prisoners’ rights litigation, the courts often served as the independent, outside inspector. That changed very significantly in 1996, when the very conservative Congress enacted the Prisoners Litigation Reform Act, which greatly reduced the authority of federal courts to look at and correct constitutional and human rights violations in the jails and prisons of America.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Almost every prison and jail in America has a written rule book which lists all regulations and procedures for behavior in the facility. Enforcement of these rules varies within different institutions. Some prisons and jails follow the rule books carefully and some are used arbitrarily. The rules and regulations are enforced by the prison staff although most facilities allow prisoners to file grievances against staff or the prison administration for alleged violations of the rules or their legal rights. However, these grievances are heard by other prison staff and are not often decided in the prisoner’s favor. Usually, prisoners are allowed to appeal a grievance decision to the central authority, but again it is kept within the prison system. Prisoners can appeal to the courts, but it is usually difficult to obtain counsel and they face the problems mentioned in Standards above.

Prisoner Abuse. Generally speaking, the laws and court decisions prohibit cruel and unusual punishment treatment but degrading treatment is usually difficult for courts to decide on. The term is not often found in U.S. law or decisions. The use of dark cells are sometimes allowed, depending on special circumstances.

SERVICES FOR INCARCERATED PERSONS

Health Care. The Supreme Court has ruled that “deliberate indifference to serious medical needs” is a violation of the U.S. Constitution. However actual medical care varies greatly from state to state and in the federal system. In recent years, many states have contracted their prison health care to private, profit making, companies and the record here has been very bad. These companies often neglect or refuse medical care because of the cost. It is therefore difficult to generalize as some states and local jurisdictions have very sub-standard medical care for prisoners and some have fairly decent care.

Rehabilitation Programs. Prisons have fewer work, education and recreation programs today than they had twenty years ago. That is due to the enormous growth in the prison system,

the budget problems created by this growth, and the general feeling in the U.S. society that prisons are for punishment and not rehabilitation. Thus today, most jails and prisons are huge warehouses of idleness with a few prisoners engaged in some activity.

Re-entry Programs. A movement to assist prisoners on release and reentry to society is very recent. It began a few years ago when policy makers and advocates realized that 650,000 men and women were coming out of prison every year and instead of reentry assistance, they were faced with all kinds of barriers. They were unable to obtain certain kinds of licenses, necessary for employment, unable to obtain low cost federal housing if they had a history of drug use and faced a whole range of other impediments, including the loss of voting rights as ex-offenders in many states. Re-entry programs are now being developed slowly.

RIGHTS OF INCARCERATED PERSONS

Voting. All states allow pre-trial detainees to vote, but in practice there is varying degrees of assistance and compliance. Only two states, Maine and Vermont permit sentenced prisoners to vote and they do provide absentee ballots and some assistance. Thus 48 states do not allow sentenced prisoners to vote. 38 states restore the right to vote upon completion of a prison sentence. 12 states do not allow prisoners to vote after they serve their sentence, but some of them restore voting rights after a certain waiting period of some years. Some of these 12 states do not take away voting rights for first-time minor offenses.

Visitation. All prisons and jails have some arrangements for visiting. However in some facilities, the visiting is not private and does not allow for any physical contact between the prisoner and the visitor. In these facilities, the prisoner and the visitor are separated by a window or a metal screen. There are almost never any facilities for private visits for family members. Visiting is also complicated by distance. Some prisoners may be in facilities thousands of miles away from their families. Prisoners may be transferred to other states for a variety of reasons, and the advent of private prisons, far from the prisoners home, sometimes makes family visits impossible. For example, the state of Hawaii, located in the middle of the Pacific Ocean, currently has nearly half of its 3600 prisoners in private prisons in the states of Mississippi, Oklahoma, Arizona and Kentucky. Those prisoners almost never receive a visit from their family. A few states do make arrangements for family travel to the prisons, but it is rare.

Another mode of visitation is by telephone. Telephone visits are non-existent in some states, and exorbitantly priced in others. Modern communication systems could enhance family relations and provide educational opportunities.



Article 2. For the purposes of this convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

Inter-American Convention to Prevent and Punish Torture, 1985.

SIGNATORY COUNTRIES: Argentina, Bolivia, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela.

Uruguay



CRIMINAL JUSTICE

Indigents. Police may hold a detainee for 24 hours before presenting the case to a judge, at which time the detainee has the right to counsel. Confessions obtained by the police before a detainee appears before a judge and attorney (without the police present) are not valid. If the detainee cannot afford a lawyer, the courts appoint a public defender.

Judges rarely granted bail for persons accused of crimes that carry at least two years in prison. Between 60 and 65 percent of all persons incarcerated were awaiting a final decision in their case. The length of time an accused spends in jail pending trial varied and contributed to tension in the prisons.

Juveniles. Juveniles are minors until age 18. Most juvenile offenders are placed in halfway houses which provide educational, vocational, and other opportunities. They are permitted to enter and leave such facilities without restriction. Juveniles who committed serious crimes were incarcerated in juvenile detention centers, which resemble traditional jails and have cells. Conditions in some of these facilities are as bad as the adult versions, with some youths permitted to leave their cells only one hour per day.

Death Penalty. Section II, Article 26 of the Constitution of the Oriental Republic of Uruguay (1966) states in part: “The death penalty shall not be applied to anyone.” (Amnesty International).

There is no sanction of life without parole. During the period of military rule, many persons, including children, disappeared. A “disappearance” constitutes a continuous or permanent offense as long as the fate or whereabouts of the victim has not been determined. In 1995, Uruguay ratified the Inter-American Convention on the Forced Disappearance of Persons. Amnesty International states, “It is important that the Uruguayan society is allowed access to the whole truth of what happened during the years of the military rule and that the victims and their relatives have the right to justice and appropriate redress.”

PRISON SYSTEMS

Structure. There is one federal prison administration – *La dirección nacional de cárceles, penitenciarias y centros*. It is a division of the Ministry of the Interior, which also administers the National Police.

In 2003 the prison population total was 7100, confined in 24 establishments. Official capacity of the prison system was 3386. 72.5% of the prisoners were pre-trial detainees, and 6% were women. The women are held in separate facilities except for the Artigas prison where women are held in a separate facility within the prison. In general, conditions for the female prisoners are better than for the men due to the small population and the availability of training and education opportunities.

Pre-trial detainees were not held separately from convicted prisoners. The law provides the accused with the right to a prompt judicial determination of the legality of detention, which is not always respected, and requires that the detaining authority explain the legal grounds for the detention. A judge must investigate any detainee claim of mistreatment.

Standards. The Penal Code provides statutory prison standards. According to the U.S. Embassy, “The judicial and parliamentary branches of government are responsible for investigating specific allegations of abuse.”

Conditions in prisons were poor and deteriorated during the year, as aging facilities were not adequately maintained. Overcrowding continued due to budget problems and strong minimum sentencing guidelines. Through an early release program enacted in October, the prison population decreased slightly during the year to approximately 6500 prisoners in facilities designed to hold 2940. The overcrowding caused sanitation, social, and health problems in the major facilities. The Libertad prison, badly damaged in a riot in 2002, held hundreds of prisoners, despite its official status as a condemned building. In August when a violent storm destroyed part of the roof at the prison, officials could not provide adequate alternative shelter. The government continued to hold some prisoners in modified shipping containers; the cells lacked running water and posed sanitation problems.

In addition to overcrowding, the penal system suffered from understaffing and corruption. Authorities did not always separate prisoners according to the severity of their crimes.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Grievances. Written rules governing prisoner behavior would be included in the Penal Code and enforced by the local prison officers, and backed by the National Police and ultimately by the judicial and parliamentary branches of government. Human rights groups have reported that police sometimes mistreat prisoners, who rarely file complaints. When complaints are filed, they are investigated by the government. (U.S. Embassy report).

Prisoner Abuse. The law prohibits torture and other cruel, inhuman, or degrading treatment or punishment. However, there have been numerous reports of abuse of prisoners. There were no new developments in the investigation into a claim that a guard at the Libertad prison tortured two prisoners in 2004.

The U.S. Embassy reported the following: “Human rights groups and an organization of the families of prisoners alleged that prisoners were routinely beaten during processing and during searches; and that food, bedding, and clothing were of poor quality and insufficient quantity.

SERVICES FOR INCARCERATED PERSONS

Health Care. Poor health care is inevitable in the overcrowded prisons. The U.S. Embassy reported that access to medical care was poor. A prison director stated that prisoners received a little more than half of the recommended daily food allowance, and prisoners’ families had to provide additional food.

Rehabilitation Programs. The government shows increasing interest in providing rehabilitation programs in the prisons. The National Youth Institute (INAME) and the Pedagogic Center are examples of this new outlook.

Reentry Programs. In addition to increased government realization of the importance of pre-release programs, there are various non-government programs taking effect. One very fine example is the work of Virginia Varela Dubra, elected to the *Ashoka Fellowship* in 2003. Her inspirational story and work are described online at www.ashoka.org/fellows/. In summary, “Her work starts in the prison, where she provides counseling, private tutoring . . . and off-site vocational training . . . she makes sure that young inmates have a place to go and an opportunity to forge a new life after their release. Having proven the effectiveness of her approach in Montevideo’s largest juvenile detention center, Virginia is increasing her organization to include eight additional prisons in Uruguay, with plans to use her existing network to spread elements of her work throughout Latin America.”

RIGHTS OF INCARCERATED PERSONS

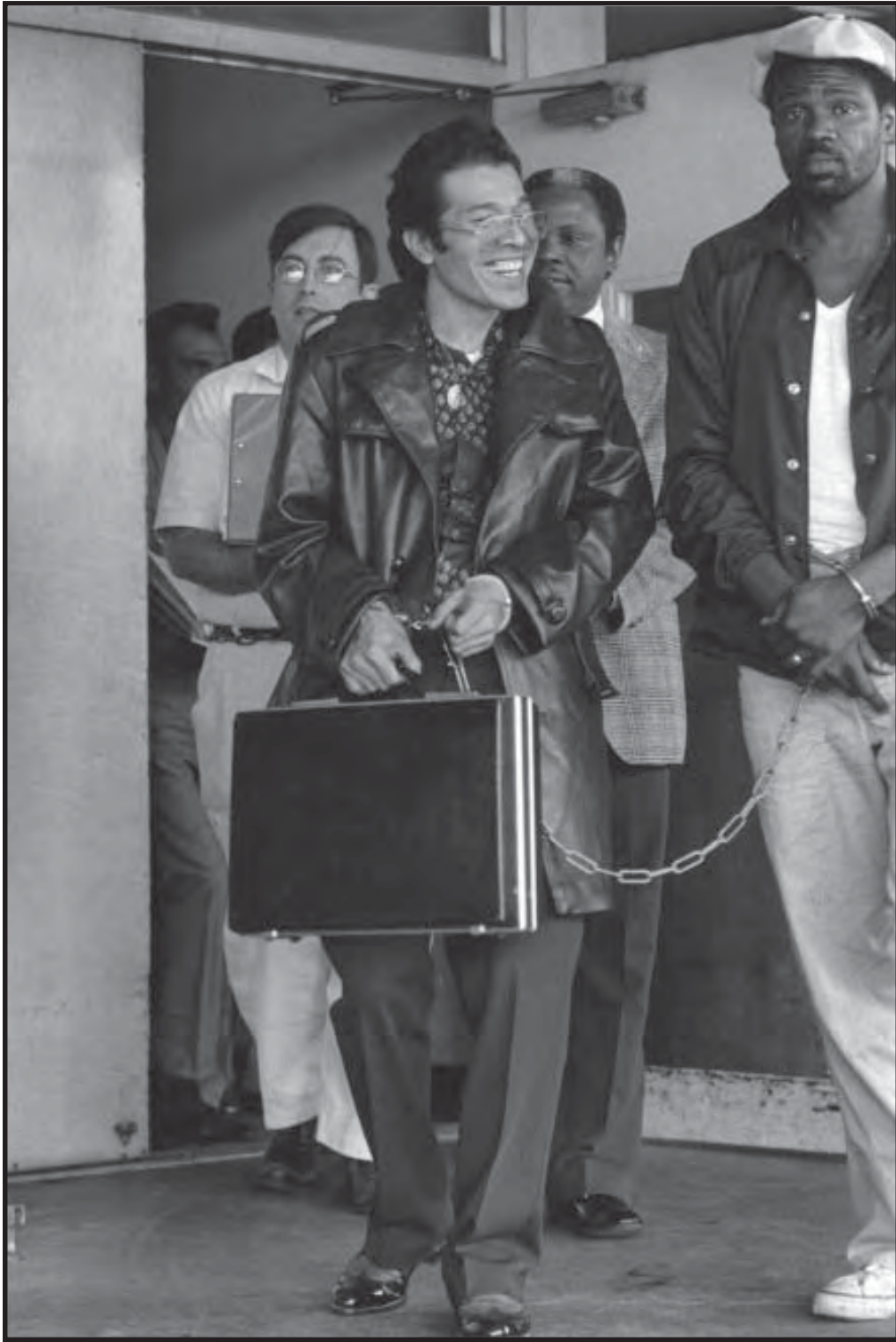
Voting. Felons in prison or released are not allowed to vote. For Tables listing countries where prisoners are or are not allowed to vote, see online, “Incarceration and Enfranchisement: International Practices, Impact and Recommendations for Reform” by Brandon Rottinghaus, Dept. of Political Science, Northwestern University. In his introduction he tells the story of Joe Loya who, like three million other felons, found out that in spite of having served his time with rehab and parole training, still could not vote. “I came out of prison wanting to think and act 100 percent different than when I went in. I supposed that the opposite of the virulently anti-social criminal is an optimistic civic-minded citizen.” What a disillusion “to be excluded from the civil process.”

Visitation. Prison policies include visitation, but sources did not give details, except to say that there were problems. “Narcotics and weapons were smuggled into several facilities, allegedly with official collusion. Prison officials complicated family visitation, in which family members provide food to supplement a prisoner’s diet, and subjected family members to invasive searches, sometimes under unhygienic conditions. The government permitted general prison visits by independent human rights observers as well as inmate visitation and visits from foreign diplomats.

Article 8.2 Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to the law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- (b) prior notification in detail to the accused of the charges against him;*
- (e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;*
- (f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts.*

American Convention on Human Rights, 1969.



Jail-house Lawyer; David Ruiz

Venezuela



CRIMINAL JUSTICE

Indigents. Available reports make no mention of Venezuela having a state-funded public defender system. A judge may appoint an attorney for an indigent prisoner if he is willing to serve pro-bono.

Juveniles. Young people are treated as adults at age 18. Arrested youths are processed by a separate department of juvenile detention. However, in its urgent recommendations for prison reform, Human Rights Watch includes the transfer of all minor prisoners at La Planta Prison in Caracas to safe juvenile centers.

Security forces and law enforcement authorities often imprisoned minors together with adults, even though separate facilities existed for juveniles. Because reform institutions were filled to capacity, hundreds of children accused of infractions were confined in juvenile detention centers where they were crowded into small, filthy cells, fed only once a day, and forced to sleep on bare concrete floors. Pretrial detainees were held with convicted prisoners.

Death Penalty. Venezuela has no death penalty. However, the stark reality is that hundreds of prisoners die or are wounded every year. In 2005 there were 408 recorded deaths of prisoners and 726 seriously wounded. It should be noted that many of the prison casualties are caused by prisoners themselves. This epidemic of violence is facilitated by the prevalence of weapons among prisoners—knives, machetes, pistols and even grenades. Often the violence is related to gangs which control the arms traffic, as well as the drug and money traffic.

Reports do not indicate that Venezuela has a sentence of LWOP (Life Without Parole). Many prisoners, though, no doubt feel totally forgotten and forsaken.

PRISON SYSTEMS

Structure. The 28 Venezuelan prisons are under the direction of the Department (Ministry) of Justice. In January of 2006, 17,150 Venezuelans were in prison. 42% were sentenced; 52% were indicted, but not tried and sentenced. Five percent were women. The convicted and the untried stay together in the same crowded prisons. There is one prison for women only. Some prisons have annexes for female prisoners. Venezuelan law permits women prisoners to keep their children with them until age three. Prison conditions vary from fair to deplorable. (Detailed descriptions of prison conditions are given in reports from Human Rights Watch.)

OVP reported that as of September, 9,653 persons (51 percent of prisoners) were in pretrial detention. Trials were delayed due to many factors, including the limited power of judges to compel authorities to transport prisoners to court.

Two-thirds of Venezuelan prisoners have not been sentenced, and technically should not be locked up. The majority of those arrested are kept locked up rather than getting out on bail, or getting probation. The legal process is inefficient and legal recourse for the masses is scarce.

Standards. There are many prison policies, but enforcement is a super problem. Prisons are severely overcrowded, understaffed, and plagued by weapons, drugs and gangs. In general, the prisoners are in control, with the powerful and most wealthy getting the best rooms, food, and any other available amenities. In the case of a riot, the National Guard intervenes.

Prison conditions were harsh due to scarce resources, poorly trained and corrupt prison staff, and violence by guards and inmates. The prison monitoring NGO Venezuelan Prison Observatory (OVP) estimated that existing prisons could hold approximately 60 percent of the estimated 19 thousand prisoners. Severe overcrowding in some prisons and food and water shortages remained problems.

Inmates often had to pay guards and other inmates to obtain necessities such as space in a cell, a bed, and food. Most prisoners obtained food from their families, by paying prison guards, or in barter with other prisoners. Many inmates also profited from exploiting and abusing others, particularly since convicted murderers and rapists often were held with pretrial detainees or first-time petty offenders. Trafficking in arms and drugs fueled gang-related violence and extortion. Prison officials often illegally demanded payment from prisoners for transportation to judicial proceedings.

BEHAVIOR AND PROTECTION OF INCARCERATED PERSONS

Prisoner Abuse. Rules prohibiting abusive treatment must be on file . . . somewhere. Before such rules can make prison life safe and humane, the prevailing system must be renovated. Needed reform will require funding, training more officers (guards), and replacing public and political apathy with genuine concern for all citizens, including those of the *barrios marginales* (the marginalized or destitute).

Violence between prison gangs, including shootouts and riots, was common. From January through September, OVP recorded 304 deaths and 517 injuries in the prisons. Most inmate deaths resulted from prisoner-on-prisoner violence, riots, fires, and from generally unsanitary and unsafe conditions. Prisoners also died as a consequence of poor diet and inadequate medical care.

SERVICES FOR INCARCERATED PERSONS

Health Care. In most prisons, there is no health care for prisoners. Visiting relatives may provide minor medical aid. Those prisoners with money may buy some kinds of medicine.

Rehabilitation Programs. One of Venezuela's major prison problems is idleness. A few prisons have limited opportunities for training, work, and recreation. For far too many, whose violation has been minor and non-violent, prisoners are doomed to an incarceration where no one cares, where creative rehabilitation is stifled, and where a reasonable, earned release to live freely is nowhere in sight.

RIGHTS OF INCARCERATED PERSONS

Voting. Venezuela is not in the Rottinghaus list of countries that permit its prisoners (estimated at 15,107 in 2003) to vote. (www.sentencingproject.org/pdfs/rottinghaus.pdf)

Visitation. Prisoners may have contact visits twice a week, one of which may be a conjugal visit. Visitors must provide their own transportation, which is always a real problem for poor families.

Article 5.1 Every person has the right to have his physical, mental, and moral integrity respected.

American Convention on Human Rights, 1969



Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

United Nations Declaration of Human Rights, 1948.

