



DIGNITY AND JUSTICE FOR DETAINEES WEEK

Information Note No. 1

Detention and Human Rights: General and Legal Aspects

Individuals are detained by the State for a variety of reasons. Some are awaiting trial, or have been convicted of a crime and received a custodial sentence. Others are detained following administrative or executive orders unrelated to the criminal justice system, for instance in health institutions, immigration detention facilities or refugee and asylum processing centres. Some persons are put in custody for “educational supervision”. Yet others are detained illegally, kidnapped, or made victims of forced disappearances.

There are perhaps millions in the world today who find themselves in detention but should not be, either because their detention is arbitrary or otherwise illegal.

The civil, political, economic, social and cultural rights of detainees are the focus of the Dignity and Justice for Detainees Week (6 – 12 October 2008) proposed by the Office of the High Commissioner for Human Rights.

The initiative is part of the commemoration of the 60th anniversary of the Universal Declaration of Human Rights, which recognizes not only the right to be free from arbitrary detention, torture and degrading treatment, but also a number of other rights which protect detainees.

The High Commissioner directs her appeal on behalf of detainees to National Human Rights Institutions (NHRIs), OHCHR field presences, governments, United Nations organizations and country teams, civil society, non-governmental organizations (NGOs) specializing in issues related to detention, police forces, justice systems and the media.

All partners are invited to participate in the Detention Initiative in a manner they deem appropriate in light of their expertise and conditions in the country of operations. But the goals of the initiative are common: to prevent arbitrary and unlawful detention and improve conditions for all those deprived of their liberty.

The overarching messages of the High Commissioner’s Detention Initiative are:

People in detention do not forego their human rights.

Some rights (such as the right to liberty) are necessarily restricted by detention. But regardless of the reasons why they have been deprived of their liberty, individuals in detention are more vulnerable to human rights violations. These range from violations of the rights to education, health, food and freedom of religion to arbitrary executions, torture and forced disappearances. Moreover, the protection of the rights of those in detention is often not deemed a priority by the public, which in turn can dampen government efforts to increase protection.

Governments have the obligation to respect, protect and fulfil the rights of people in detention.

Governments and their officials (and in some cases, private contractors) are obliged not to violate the rights of detainees. For example, this may require measures to ensure that persons living with HIV and persons with disabilities in detention do not suffer from any form of discrimination in relation to the enjoyment of their rights.

Detainees' rights also need to be protected from violation by others.

Governments have an obligation to protect detainees from human rights abuses by others. For instance, it is their responsibility to institute measures (be they laws, policies or programmes) aimed at eradicating prisoner-on-prisoner violence.

Governments are obliged to adopt appropriate measures to ensure that all detainees are able to enjoy their rights to, among other things, health, food, water and education.

International human rights norms set out in detail the rights of individuals in detention and how they can be respected and protected. These form the backdrop to guarantees enacted at the national level.

The human rights standards found in international treaties are supplemented by a number of principles and guidelines agreed between States, as well as the views and decisions of the various international human rights committees and independent experts. *(Please see the list of the key human rights documents below.)*

Very specific standards apply to areas such as conditions of detention and due process. The following are some of the general human rights principles relevant to detention:

1. **Everyone has the right to liberty: any detention must be lawful and should be used only as a last resort.** *Article 9, International Covenant on Civil and Political Rights (ICCPR); article 37(b), Convention on the Rights of the Child; article 14, Convention on the Rights of Persons with Disabilities (CRPD); and Article 16 of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.*
2. **No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.** *Article 7, ICCPR; the Convention against Torture; and Article 15, CRPD.*
3. **All persons deprived of their liberty in any form whatsoever are to be treated with humanity and respect for the inherent dignity of the human person.** *Article 10, ICCPR.* Among other things, this includes respect for the absolute prohibition on torture, as well as the maintenance of appropriate conditions of detention in terms of access to clean water, adequate and appropriate food, medical goods and services and, in cases of longer-term detention, educational and recreational activities. *Articles 11, 12, 13, 14 and 15, International Covenant on Economic, Social and Cultural Rights.*

4. **Detainees continue to enjoy their all human rights (civil, political, economic, social, and cultural)** except insofar as those rights are necessarily curtailed by reason of the detention itself. The purpose of detention must be clear. In respect of detention in the criminal justice system, treatment must be consistent with the aim of reform and social rehabilitation of the detainee. *Article 10(3), ICCPR.*

5. **Individuals in detention must be able to exercise their rights without discrimination of any kind** as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, disability, birth, or other reasons, for example, HIV status. *Article 2 of the International Covenant on Economic, Social and Cultural Rights, the ICCPR and CRC.* This includes equality before the law. *Article 26, ICCPR; Article 15, Convention on the Elimination of All Forms of Discrimination against Women; and Article 5 and 12, CRPD.*

6. **Those in detention must have the opportunity to complain about violations of their rights,** be they on the basis of their detention or the conditions thereof. Where a violation is found, detainees have a right to a remedy and compensation. *Article 9(4) and (5), ICCPR.*

Key human rights documents relating to detention

The treaties

- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- International Convention for the Protection of All Persons from Enforced Disappearance
- Convention on the Rights of Persons with Disabilities

Guidelines

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- Guidelines for Action on Children in the Criminal Justice System
- International Guidelines on HIV/AIDS and Human Rights
- UNHCR revised guidelines on applicable criteria and standards relating to the detention of asylum seekers,
- Recommended Principles and Guidelines on Human Rights and Human Trafficking

ABOUT OHCHR

The Office of the United Nations High Commissioner for Human Rights (OHCHR), a part of the United Nations Secretariat, has been given a unique mandate to promote and protect all human rights. Headquartered in Geneva, the Office is also present in some 50 countries. Headed by the High Commissioner for Human Rights, a position established by the General Assembly in 1993 to spearhead the United Nations' human rights efforts, OHCHR takes action based on the unique mandate given it by the international community to guard and advocate for international human rights law. For more information please visit www.ohchr.org

On Human Rights Day 2007, the United Nations and OHCHR launched a year-long UN system-wide advocacy campaign to mark the 60th anniversary of the Universal Declaration of Human Rights (UDHR), under the theme: "**Dignity and justice for all of us**".