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**Annual report of the United Nations High Commissioner
for Human Rights and Reports of the Office of the
High Commissioner and the Secretary-General**

**Joint written statement* submitted by International
Organization for the Elimination of All Forms of Racial
Discrimination, Association Ma'onah for Human Rights and
Immigration, International-Lawyers.Org, Union of Arab
Jurists, United Towns Agency for North-South Cooperation,
non-governmental organizations in special consultative
status, International Educational Development, Inc., World
Peace Council, non-governmental organizations on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 January 2021]

* Issued as received, in the language(s) of submission only.



The COVID-19 Crisis in Latin American Prisons

Prisons and places of detention, where human beings are forced to live in close quarters, are by their very nature fertile ground for communicable diseases, like COVID-19. Prisons in Latin America, which have historically endured alarming rates of overcrowding, substandard sanitation, and poor or non-existent medical care, were especially vulnerable to the decimating effects of the virus.

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Agnes Callamard, did not hesitate to describe COVID-19 as a humanitarian crisis for people living in prison, and urged States to rethink their detention and sentencing policies before they led to collective death sentences.

Governmental reaction, however, lacked the swiftness and boldness required by the gravity of the situation. Emergency measures devised in many countries were limited in scope and deficient in implementation. Their results, too meager to remedy the structural deficiencies that Latin American prisons have been dragging for decades, did little to avert the soaring rates of morbidity and mortality that rampaged through the region's detention facilities.

Most countries organized their policy on three axes: the reduction of overpopulation, the improvement of sanitary and medical conditions, and the restriction of visitations. Though adequate in principle, their execution was often ineffective and presented numerous shortcomings.

Reduction of Overcrowding

Several countries resorted to amnesties or pardons to reduce the size of prison populations. Of those who did, some were overly restrictive when choosing the categories of inmates who would benefit from these measures. In Chile, house arrest was granted only to certain groups of convicted prisoners, while excluding those held in pre-trial detention. On the contrary, Peru ordered the release of prisoners held in pre-trial detention for various non-serious crimes, while not adopting any such measure for those who were already serving their sentences. Mexico, on the other hand, issued an amnesty for both convicted and accused prisoners, but applicable only to very few offences.

In other cases, it was implementation of this policy which met the greatest difficulties. For instance, even though the government of the Plurinational State of Bolivia issued a presidential pardon in favor of large categories of vulnerable and non-dangerous inmates, almost none effectively benefited from it.

Other governments deflected their own responsibility from the problem by deferring to courts the decision on whether, and to what extent, inmates should be released. Instead of enacting general amnesties or broad pardons, judges were charged with the task of considering the possibility of granting alternative measures to imprisonment on a case-by-case basis. In Brazil and Argentina, high tribunals adopted resolutions recommending lower courts to release or transfer to house arrest certain categories of vulnerable prisoners. This policy, however, showed poorer results and was executed in a less transparent fashion.

Notwithstanding the variations between these approaches, none have achieved the goal of solving the problem of overcrowding. Even countries that accomplished a substantial reduction in the size of their prison populations still report occupancy levels which are far above maximum capacity.

Restriction of Visitations

Even though suspension of visits may have been necessary to prevent the virus from entering prisons, it had a devastating effect on the physical and mental health of inmates. The enforcement of this measure without prior consultations and for an indefinite period of time often led to protests and riots. Moreover, in many countries, inmates rely on their relatives to receive food, medicine, clothes and hygiene items that are otherwise not

provided by the authorities, which made protracted restrictions of visits particularly harmful.

In the Bolivarian Republic of Venezuela, a riot erupted in the Los Llanos penitentiary after a ban on visitations put inmates at the brink of starvation. The uprising was brutally suppressed by security forces and ended with a toll of 47 dead prisoners. In Argentina, the shortage of adequate food caused by the suspension of visits prompted a revolt in the prisons of Coronda and Las Flores, during which a total of five inmates were killed. Prisoners in a detention facility in Colima, Mexico, also organized a mutiny to protest the month-long suspension of visits, which were not resumed despite the fact that three inmates were killed in the suppression of the riot.

Improvement of Sanitary Conditions and Medical Care

Even though many countries announced that they would distribute hygiene items among prisoners, strengthen medical attention, and intensify cleaning and disinfection in detention premises, reality fell short of that promise.

Lack of hygiene products and clean water, inadequate medical care and vermin infestations prompted riots in several prisons in Colombia, one of which resulted in 23 dead inmates. Disinfection was reportedly conducted only once during the first semester of 2020 in pre-trial detention facilities in the Bolivarian Republic of Venezuela. In El Salvador, on the other hand, president Nayib Bukele ordered a crackdown on gang crime by implementing strict confinement in several prisons across the country. As a result of this, inmates were kept away from fresh air and sunlight and often packed together in the yard during security operations, without care for any social distance precaution.

Covid-19 and the Human Rights of Prisoners

According to United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), detention facilities should be spacious and clean; they should be equipped with water and proper sanitary infrastructure; and inmates should have access to sufficient fresh air and natural light.

States are required to supply prisoners with water and toilet articles ‘as are necessary for health and cleanliness,’ and must guarantee that they enjoy the same standard of healthcare available in the community at large. This means that prisons should maintain a healthcare service capable of monitoring, protecting and improving the physical and mental state of inmates, and ensure transfers to specialized institutions outside prison when necessary.

More importantly, the Mandela Rules prescribe that a physician must ascertain the state of health of prisoners upon their admission to a detention facility. In case they are suspected of having an infectious disease, they should be isolated during the infectious period and adequate treatment should be afforded to them.

The United Nations High Commissioner for Human Rights, Michelle Bachelet, has stressed the need to alleviate overcrowding in detention facilities in order to protect the lives and health of inmates during the pandemic. She has also warned governments that sanitary measures could not infringe basic human rights, such as access to food, water, medical care and legal assistance. Even though she acknowledged that suspension of visits might be necessary to prevent the spread of COVID-19, she urged governments to implement such measures in a transparent manner and to communicate them to prisoners, avoiding the sudden interruption of contact with the outside world, which could only aggravate an already distressing situation. The High Commissioner further recommended alternative measures to compensate these restrictions, such as allowing videoconferences and email, and extending the right to use telephones.

- Moreover, the Interim Guidance on COVID-19: Focus on Persons Deprived of Their Liberty issued by the Inter-Agency Standing Committee urges governments to consider the release of, at least, children, elderly and sick prisoners, minor offenders

and those who are approaching completion of their sentence. It further encourages States to replace pre-trial detention for non-custodial alternatives.

Recommendations

The United Nations Human Rights Council should urge States to:

- Conduct regular testing on both prison population and personnel. New prisoners admitted into a detention facility must be tested as a matter of routine until the end of the pandemic.
- Distribute face masks and other hygiene products among inmates free of charge.
- Perform periodic and comprehensive disinfection works in detention premises.
- Enforce quarantine measures in a dignified, non-discriminatory and non-punitive manner, ensuring that inmates who are kept in isolation have access to food, fresh air, exercise and, should they need it, health attention.
- Provide prisoners with Covid-19 who develop serious symptoms appropriate medical care, including transfer to civil hospitals, without expense.
- Ensure that lockdown measures do not cause the interruption of medical treatment for inmates with preexistent conditions.
- Balance the sanitary benefits of suspension of visits against the emotional harm that it causes to both inmates and their loved ones, and hence enforce it only when other less restrictive measures would be ineffective. This decision should be reviewed periodically and maintained only if it is strictly necessary under the current sanitary situation. Palliative measures, such as facilitating virtual communications, should be applied while the suspension of visits remains in force. States must guarantee that the interruption of visitations does not affect the delivery of food, medicines and other indispensable articles.
- Enforce and continue to enforce vigorous measures to reduce overpopulation in prisons.
- Discharge a prompt, independent and impartial investigation ex officio after every episode of violence in order to establish the administrative and criminal responsibility of State officials.
- Communicate to inmates and their families in a clear, truthful and periodic fashion all information pertaining to the sanitary situation inside prison.

Geneva International Centre for Justice (GICJ), Just Atonement Inc., The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGO(s) without consultative status, also share the views expressed in this statement.