

International Human Rights Instruments and Laws

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Summary

The second half of the twentieth century has witnessed a strive of the international community to promote respect for human rights and fundamental freedoms everywhere in the world. Within this context, the greatest achievement of the United Nations (UN) system is considered to be the creation of a body of international human rights instruments and laws, amongst them those pertaining to the administration of justice and the protection of prisoners. The present article reviews the concept of international human rights law, the instruments relating to the protection of prisoners and the way these instruments address the issue of women prisoners.

a. Human rights are understood as being those rights which are inherent to the human being, i.e. they come to every person as a consequence of being human. Amongst the most important characteristics of human rights are the following:

- they are founded on respect for the dignity and worth of each person;
- they are universal, i.e. they are applied equally and without discrimination to all people;
- human rights are indivisible, interrelated and interdependent, for the reason that it is insufficient to respect some human rights and not others;
- human rights are inalienable, in that no one can have their right taken away except in very specific situations.

There are three categories of human rights. The first are the civil and political rights that work to protect the individual from abuses and arbitrary actions committed by those who hold political power (e.g. voting and elections, justice system, basic civic freedoms). The second are the economic, social and cultural rights that include the right to decent and the right to enjoy an

adequate standard of living. Finally, there are the collective rights that groups of people would be able to claim such as the right to self-determination, the right to development and so on.

Human rights are legally guaranteed by human rights law, which serve to protect individuals and groups against actions which interfere with fundamental freedoms and human dignity.

In the second half of the twentieth century, the United Nations (UN) embarked on the process of articulating human rights in order to translate them from morality and principles into international law. The adoption of the Universal Declaration of Human Rights, in 1948, was the first step towards the progressive codification of international human rights. The principles of the Declaration have inspired more than 100 human rights instruments which, taken together, constitute international human rights standards.

International human rights law consists mainly of treaties and customs as well as declarations, guidelines and principles. A treaty is an agreement by States to be bound by particular rules. International treaties have different designations such as covenants, charters, protocols, conventions, accords and agreements. A treaty becomes legally binding on the state, once that state agrees to become party to the treaty. Customary international law (or "custom") is a general and consistent practice followed by States deriving from a sense of legal obligation. Thus, while the Universal Declaration of Human Rights is not in itself a binding treaty, some of its provisions have the character of customary international law.

On the other hand declarations, proclamations, standard rules, guidelines, recommendations and prin-

ciples represent general norms of international law principles and practices that most States would agree on. While they do not imply any binding legal obligations, they nevertheless represent a broad consensus on the part of the international community; therefore, they have a strong and undeniable moral force on the practice of states in their conduct of international relations. State responsibility for human rights includes the obligation to take pro-active measures to ensure that human rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory.

A number of conventional mechanisms and extra-conventional mechanisms are in place to monitor the implementation of international human rights standards and to deal with complaints of human rights violations. The conventional mechanisms include the various committees of independent experts established to monitor the implementation of international human rights treaties by States Parties. In contrast, extra-conventional mechanisms have been created by the Commission on Human Rights to examine, monitor and publicly report on major phenomena of human rights' violations. These mechanisms have been

entrusted to working groups of experts acting in their individual capacity or individuals designated as Special Rapporteurs, Special Representatives or independent experts.

There are about 100 treaties, declarations, guidelines, recommendations and principles that set out international human rights standards. Among those instruments are those pertaining to the administration of justice, including the protection of persons subject to detention or imprisonment. What follows is a brief overview of some of the major human rights in the administration of justice, and an analysis of their degree of sensitivity to the issue of women prisoners.

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
(Adopted by the General Assembly in 1984)

This convention embodies all the universable applicable standards against torture which were developed over the years by the UN. Article 1 of the Convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession,

Human Rights in the Administration of Justice

- 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 the Liberty
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention against 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
- Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Basic Principles on the Role of Lawyers
- Guidelines on the Role of Prosecutors
- United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Basic Principles on the Independence of the Judiciary
- Model Treaty on the Transfer of Proceedings in Criminal Matters
- Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released
- Declaration on the Protection of All Persons from Enforced Disappearances
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions



of the human person. This instrument includes also reference to the systems that should be put in place to guarantee the observation of those principles. It also refers to the right of reporting to superior levels of authority about the violations taking place against these principles.

Basic Principles for the Treatment of Prisoners
(Adopted by the General Assembly in 1990)

These include 11 principles that need to be adopted in the treatment of prisoners. They make special reference to respect of the human dignity of prisoners; their right to full development; their right to meaningful remunerated employment; the rights to health and to education, and; the attention needed to ensure their full reintegration into society.

United Nations Standard Minimum Rules for the Administration of Juvenile

Justice (The Beijing Rules) (Adopted by the General Assembly in 1985)

These rules refer to the measures that need to be taken by Member States to further the well-being of the juvenile (that has committed an offense against the law) and their family. The rules are broad and refer to comprehensive social policy that aims at promoting the welfare of juveniles to the greatest possible extent. The rules included in this document are comprehensive and detailed. They are the most classical ones that still apply today, especially in terms of their reference to deprivation of liberty as a last resort for dealing with those young persons who have committed offenses against the law.

United Nations Guidelines for the Prevention of Delinquency (The Riyadh Guidelines) (Adopted by the General Assembly in 1990)

The Guidelines are built on the assumption that the prevention of juvenile delinquency is an essential part of crime prevention in society. The Guidelines include

punishing him for an act he has committed or is suspected of having committed ...”

Standard Minimum Rules for the Treatment of Prisoners (Approved by the Economic and Social Council in 1977)

These rules do not refer to a model penal system that can be readily applied; rather, they are a series of principles and practices that need to be adopted in the treatment of prisoners and in the management of penitentiary institutions. These standard rules apply to all categories of prisoners, criminal or civil, untried or convicted, including those subject to security measures or to special corrective measures.

Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Adopted by the General Assembly in 1988)

These principles call for the treatment of all persons under detention or imprisonment in a humane manner and with due respect to the dignity

interventions that need to be made at various levels and by the entire society to ensure the harmonious development of adolescents. The Guidelines make reference to general prevention and to the various constituents of the socialization process and their role in prevention of delinquency; these include the family, the community and the mass media. It also includes guidelines regarding the social policy and the legislation to be adopted in the administration of juvenile justice.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Adopted by the General Assembly in 1990)

These rules include the minimum standards that need to be adopted for the protection of young prisoners who are deprived of their liberty; these standards serve to ensure that human rights and fundamental freedoms are protected. The rules make specific reference to the fact that deprivation of liberty should be a measure of last resort for juveniles. They include measures pertaining to juveniles under arrest or awaiting trial, management of juvenile facilities, and to personnel dealing with those juveniles.

How Gender Sensitive are those International Instruments?

A review of the international human rights instruments

relating to the administration of justice from the perspective of their sensitivity to women’s issues reveals a rather timid and conventional picture. Hence, reference to women is made under three main headings:

First, within the framework of highlighting non-discrimination in the treatment of prisoners: in almost all the texts of those instruments, clear reference is made to the principle of non-discrimination, whereby it is clearly stated that the “Standards and rules included shall be applied impartially, without discrimination of any kind as to race, color, age, sex,”

Second, within the framework of specifying the place and the conditions of detention. Separation between prisoners on the basis of their sex is mentioned in almost all of the instruments reviewed. Some of those instruments specify that a responsible woman officer shall be the custodian of the institution for women; further specification goes as far as saying that no male staff member will have the right to enter the women’s side of the prison. This is a very important mechanism of protection, since women prisoners are particularly vulnerable to custodial sexual abuse, especially when male guards outnumber women guards, as in the case in many women’s prisons. The representation of women in the personnel dealing with prisoners is also noted under the need for professionalism and training,

	International Covenant on Civil and Political Rights	Optional Protocol to the International Covenant on Civil and Political Rights	Second Optional Protocol to the International Covenant on Civil and Political Rights, Aimed at the Abolition of the Death Penalty	Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
Algeria	1989	1989	-	1989
Bahrain	-	-	-	1998
Egypt	1982	-	-	1986
Iraq	1971	-	-	-
Jordan	1975	-	-	1991
Kuwait	1996	-	-	1996
Lebanon	1972	-	-	2000
Libya	1970	1989	-	1989
Morocco	1979	-	-	1993
Oman	-	-	-	-
Qatar	-	-	-	2000
Saudi Arabia	-	-	-	1997
Sudan	1976	-	-	1986
Syria	1969	-	-	-
Tunisia	1969	-	-	1988
United Arab Emirates	-	-	-	-
Yemen	1987	-	-	1991

wherein it is recommended that there shall be fair representation of women and minorities in the juvenile justice systems.

Third, within the framework of medical care, where special attention is given to protecting the rights and the special status of women, especially pregnant women and nursing mothers. Provisions are to be made at the prisons for prenatal and postnatal care and treatment. On care during childbirth, the rules stipulate that childbirth is to take place outside prisons as much as possible. Another provision is also made for nursing infants to remain in the institution with their mothers.

Few observations are worth making about certain areas that are very important/relevant for women and that are not mentioned in these instruments. These include:

- The physical environment and accommodation within prisons, especially for girls that need special protection measures
- Health components besides maternal case, including personal hygiene (which has definitely peculiar aspects in the case of women) and other medical services relevant to adolescent girls.
- Confidentiality of information, which is more

relevant in the case of women because they are more vulnerable to labeling and stigmatization.

In conclusion, while it may be stated that a body of international human rights law has been created to deal with the rights of prisoners, these instruments have not addressed adequately the special needs of women and their vulnerable status. Most of those instruments look at the issues related to women prisoners in a highly traditional form. In general, women continue to be held in smaller prisons with fewer programs and recreational opportunities, and the programs that are offered reflect stereotyped female roles, with emphasis on housekeeping, sewing, clerical and typing skills. International sources indicate that because female prison populations are growing at a faster pace than are male populations, however, even those programs once available to women inmates are becoming more difficult to enter. Living conditions for women's prisoners, both in women's prisons and in the women's wings of men's prisons, have grown even more burdensome than conditions for men.

A dynamic body of international human rights law that responds to the needs of the target group becomes therefore highly necessary to deal with the challenges posed in today's prison conditions for women.

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