A Comparative Study of Prison Overpopulation and its Consequences

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Today over 9 million people are classified as prisoners. The most obvious commonalty that these 9 million people share is the fact that they are denied basic human and constitutional rights as a result of over-burdened prison facilities. Humane treatment and rehabilitation is vital for these prisoners because a majority of these people will eventually return to their communities. These former inmates are highly susceptible to committing crimes again, as shown by high rates of recidivism. Though statistics on recidivism vary from country to country, even highly developed countries such as the United States, which holds 25% of all prisoners, and England, have recidivism rates as high as fifty to sixty-seven percent (Cavadino, 2006, 83).

The purpose of this paper will be to create greater awareness of human rights abuses in prisons that result directly from prison overpopulation. Too often the success of a country is gauged solely in terms of Power Purchasing Parity, Gross Domestic Product, or similar economic metrics. Studies neglect the importance of human and constitutional rights, especially for the most overlooked communities of people— prisoners. However, the treatment of prisoners is reflective of each nation's attitudes towards its people and human and constitutional rights, an arguably equally important aspect of quality of life.

The human rights and proper protection of prisoners is documented in the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRTP). The first United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted this resolution and the Economic and Social Council later approved it in May 1977. All members of the United Nations have subscribed to these documented rights, but in practice, certain clauses are violated. Rather than dissect violations of every point outlined in the SMRTP for each country considered, this paper will discuss the most

salient aspects of such violations that result from overpopulated prison facilities. The paper will be comparative in the sense that it will set side by side the problems that result, in each nation considered, from the universal phenomenon of facilities that are overburdened with prisoners.

The countries that will be discussed in the paper include France, the United Kingdom, the United States, South Africa, and Honduras. These countries were chosen because of their varying levels of political and economic development. A comparative study of the distinctive consequences of each country's prison overpopulation will be discussed. These consequences include an increasing numbers of suicides amongst France's prisoners, inhumane living conditions for prisoners in both the U.K. and the U.S., HIV amongst South African prisoners, and prisoner control and fires in Honduras' facilities. Rather than help rehabilitate prisoners, prisons, due to overpopulation and the resulting neglect of prisoners, have become indicators of these nations' failures to uphold their own stated standards of human and constitutional rights.

The French System

A Recent History of France's Politics on the Prison System

The French Penal system has had a history of promoting prisoner rehabilitation, but in recent years, the prison system has issued longer sentences, resulting in overpopulation of its prisons (Cavadino, 2006, 133). Prison riots from 1971-1973 initiated major reforms that attempted to improve prison conditions. However, the media and the conservative wings of government that believed the French penal system needed to be stricter on crime have criticized these reforms. As a general trend until the 2000's, right-wing governments have pursued harsh penal policy and legislation, whereas Socialist governments have aimed to reduce the overall prison population (Cavadino, 2006, 137). In the past two national elections, the Socialist party has reacted to conservative criticism by also being 'tough on crime'. This resulted in the construction of six new prisons to house the increasing prison population. Furthermore, polls from national elections indicate that the French citizenry wanted an executive candidate who supported a zero tolerance policy on crime (Cavadino, 2006, 139). Thus it comes as no surprise that the overall prison population in France has been on the rise, reaching an all time high of over 67,000 (ICPS: France, 2012), exceeding the maximum capacity by 10,000 prisoners. France's most pressing problem is the high suicide rates amongst the prison population.

Human Rights Agreement

Once enacted by the UN in 1977, France adopted the United Nations SMRTP into the country's own regulations. As outlined in the SMRTP with regard to health,

At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality. *(SMRTP)*

In theory, medical officers who can determine the mental health of prisoners should be available and work to prevent France's high rates of suicide. However, there has not been enough medical aid or guards to help evaluate French prisoners and prevent these suicides.

Suicide Amongst French Prisoners

In recent years, France's overburdened prison system has come under international scrutiny for its high rates of prisoner suicide. The prisoner suicide rates have dramatically shifted from an average of two suicides in the 1960's to an average of a hundred suicides per year in the late 2000's. With 97 inmates committing suicide in 2007, 109 in 2008, and 115 in 2009, France has the highest prison suicide rate in Europe. This recent phenomenon is a result of understaffing of guards, medical officers, and practices such as solitary confinement (Duthe, 2009). In 2009, as a response to the alarming rates of suicide, the government issued "anti-suicide-kits" that consisted of tear-proof bedding and paper pajamas (Crowded Prisons, 2009). (In the past inmates have used the old bedding and cloth pajamas to hang themselves in their cells.) These recommendations were adopted after prison psychiatrist Louis Albrand submitted a report on prisoner conditions and the effects on the health of prisoners. However, Albrand says the government ignored the report's larger suggestion of an "overhaul of jails in favour of smaller-scale structures, and curbs on the use of solitary confinement, from 45 to 20 consecutive days" (Crowded Prisons, 2009). The government has ignored these

recommendations, and has attempted to curb overpopulation simply by building more prisoners. However, this still overlooks the problem of prison understaffing.

In February of 2010, Jean-Pierre Treiber, convicted of a double murder, was found dead in his prison cell (Davies, 2010). Treiber was well known by all of France because of his famous escape from prison in a cardboard box and a subsequent month-long manhunt. Treiber's suicide exemplifies the weaknesses of the overburdened French prison system, because despite his claim to judges that he would attempt to commit suicide after being recaptured, medical staff still failed to help evaluate Treiber and get him the necessary medical attention. Treiber committed suicide during a guard changeover when staff were not on watch (Davies, 2010). Without more prison staff inmates are overlooked and left to hurt themselves if they desire. Despite France's supposed commitment to providing mental and physical medical attention to its prisoners, the successful attempts at suicide by prisoners have indicated otherwise. A reduction of the prison population, so that medical staff and guards can meet the needs of prisoners, is necessary for the rehabilitative purposes that France hopes to accomplish.

The United Kingdom's Prison System

A Recent history of the United Kingdom's Politics on the Prison System

In the 1997 national election, Tony Blair and the Labour Party won in a landslide victory. A principle factor of the Labour Party's success was its platform on criminal justice. Blair altered the public image of this party from "soft on crime" to one that was "tough on crime and tough on the causes of crime." This new image still conveyed the Labour Party's traditional position on tackling the social causes of crime, such as unemployment and lack of educational opportunities. However, to make obvious distinctions between itself and the Conservative Party, the Labour Party also aimed to outdo the Conservative Party by being harsher on crime, by proposing more severe penalties, and extending prison time for violent crimes. In response, the Conservative Party attempted to further outdo the Labour Party through even harsher legislation (Cavadino, 2006, 67). Not surprisingly, the prison population has dramatically increased. In 1994 the prison population was at 40,621, but this number has more than doubled to just under 90,000 in 2011 ("ICPS: England and Wales," 2012). There are several factors that have led to this dramatic increase in recent years, the most important being sentencing decisions (Cavadino, 2006, 68). There has been an increase in prison sentences because of the back and forth escalation of harsher policies between the Labour and Conservative party since the 1997 national elections. Additionally, two thirds of defendants are being held on remand, whereas a year ago, the statistic was only one in ten ("Crowded Out," 2012). Consequently, the English penal system has been exposed to a set of problems directly related to overpopulation.

Human Rights Agreement

Like France, the United Kingdom has subscribed to the UN SMRTP since 1977.

Detailed below are regulations in the SMRTP that are violated in the UK due to

overpopulation in the prison system:

> Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room

> The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

> All parts of the institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times. (SMRTP)

Overcrowding in UK Prisons

The overcrowding of prisons is a chronic problem for many developed countries,

but an especially acute problem in the UK. The UK has the highest rate of imprisonment

in Western Europe: 155 prisoners per 100,000 people ("Crowed Out," 2006). In 1992,

7,251 prisoners occupied and slept in cells with another prisoner, despite the cells having

a one-person capacity. By 2003, this number had increased to 17,000 prisoners who were

sharing one-person cells (Cavadino, 2006, 71). Overcrowding has led to other problems

that conflict with human rights agreements by the UK, particularly regarding sanitation in

prison facilities. Because of their old age, many prisons are decaying and are not up to

date with minimal standards. For instance, many prisoners still do not have twenty-four

hour access to a toilet facility and are expected to "slop out" their chamber pans

(Cavadino, 2006, 69). Additional consequences, though not necessarily human rights

violations, that exacerbate the overall problems for both UK prisoners include understaffing, prison violence and riots, and lack of medical attention.

Understaffing

Understaffing primarily occurs because budget restrictions limit the number of guards and staff hired. This traces back to 1985 when individual budgets were set for each prison, followed by a program that eliminated overtime for prison staff. In 1995, further cuts to the Prison Services sector and budget cuts by the Treasury further limited the hiring of new officers and recruitment. Recent increases in the budgets have been earmarked for the construction of new prisons to house the growing number of inmates, but this still neglects the greater problem of understaffing. Understaffing has led to prisoners being left in their cells longer, a lack of staff supervision for out-of-cell activities, and prisoner visits being cancelled (Cavadino, 2006, 68). Understaffing can incite prisoner violence and riots.

Riots and Violence

Prison riots and demonstrations by prisoners continue to be the problem for the UK penal system. The most notable riots include Gartree in 1978, Albany in 1983; since 1986 there have been more riots in the UK system than in any other European country (Cavadino, 2006, 11). This includes a riot at Strangeways Prison in Manchester in 1990 that lasted twenty-five days, Full Sutton in 1997 and 1998, and at Portland in 2000 (Cavadino, 2006, 12). The most outstanding recent prison riot was at Open Ford Prison in the beginning of 2011 ("Ford Prison Riot," 2012). Inmates over-powered prison guards, and caused five million English Pounds worth of damage. This case exemplified the

problem of understaffing, the negligence of prisoners, and the larger problem of overpopulation ("Ford Prison Riot," 2012).

Neglect of Mental Health

Research on UK prisoners indicates that ninety percent of prisoners suffer from some form of mental health problem, ranging from acute psychiatric illness to depression. One study indicates that "two thirds of prisoners have a personality disorder and 45% suffer from depression and anxiety" ("Crowded Out," 2012). Overburdened prisons can have a detrimental affect on prisoners with personality and mental health problems. A published report by the Joint Committee on Human Rights drew a correlation between prison overcrowding and self-inflected deaths while in custody. The report also indicates that "26% of self-harm incidents occurred within the first month of arriving in a prison" ("Crowded Out," 2012). Overburdened prison healthcare facilities neglect prisoners who are not receiving the level of support they need to successfully manage their mental health problems.

The poor conditions in the UK prison system have effects on both prisoner and prison staff morale that may not necessarily violate human rights, but contribute to escalating problems for prisoners and the country.

United States Prison System

Recent History of the United States Politics on the Penal System

With 2.37 million people, the United States has the largest prison population amongst both developed and developing countries. The US imprisons 750 people per 100,000, a statistic that surpasses repressive regimes such as China and Russia (Glaze, 2010). In addition to the incarcerated population, almost five million people are on parole, supervision or probation (Glaze, 2010). This American phenomenon is a development of the last forty years. The 1970's marked the turn away from rehabilitation. In the 1960's, politicians and policy experts campaigned on the platform of being "tough on crime." Lawmakers abandoned rehabilitation and encouraged mandatory prison sentences and the elimination of parole (Western, 2006, 3). Severe new sentences were developed for drug offenses as the federal government initiated the War on Drugs. Consequently, US prisons are overcrowded and leave prisoners to suffer inhumane living conditions, as exemplified in the state of California. A more recent development in the American prison system that has been brought to the attention of the Supreme Court is the use of solitary confinement, or isolating prisoners for as long as twenty-two hours a day. The overcrowding of American prisons, especially in California, violates the constitutional rights of prisoners, and the use of solitary confinement is also being challenged as unconstitutional.

The War on Drugs

In less than thirty years after 1970, the penal population in the US increased almost sevenfold, from 300,000 to more than 2,000,000. The dramatic increase in the prison population can be explained by the war on drugs, or the federal government taking

a more active role in crime policy and enforcing legislation that severely punishes those who use and sell illegal drugs.

In the 1964 presidential election, republican candidate Barry Goldwater's campaign introduced the idea that presidential candidates and presidents were responsible for criminal justice policies. The Republican Party and Goldwater linked the efforts of the war on poverty to criminal violence with messages such as the following:

> If it is entirely proper for the government to take away from some and give to others, then won't some be led to believe that they can rightfully take from anyone who has more than they do? No wonder law and order has broken down, mob violence has engulfed great American cities and our wives feel unsafe in the streets. (qtd. in Parenti, 1999, 7)

Goldwater's campaign message linked inner-city communities to criminal activity, and suggested it was the responsibility of the federal government to fight local crime.

The administration of Richard Nixon capitalized on the growing American fear of lawlessness. Nixon initiated the war on drugs, which was largely rhetorical, declaring drugs to be the sole cause of social erosion in America, but the administration did not push for any reform in drug policy ("A Brief History of the Drug War," 2012). Ronald Reagan, Gerald Ford, and Jimmy Carter, enhanced the federal government's role in drug enforcement by increasing the budget of federal law enforcement agencies. In the four years after 1980, FBI antidrug budgets increased from $8 million to $95 million.

The federal government's crime fighting forces focused on inner-city communities, where the cause of America's social turmoil and violence was supposed to reside. Inner city communities were suffering from economic collapse because industrial

employment significantly dropped. In response to the high rates of unemployment, residents of urban communities relied on selling drugs, specifically crack cocaine, for income (Alexander, 2010, 49). In 1985, drug wars between gangs for control of the drug markets significantly contributed to violence. Reagan and the media took advantage of the violence and presented crack cocaine as the number one issue for Americans. The War on Drug has been the principle cause for the dramatic increase of inmates in American prisons.

Constitutional Rights

The United States Constitution and its eighth amendment upholds that *"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."* Through the eighth amendment, civil rights groups have successfully challenged the Californian prison system and the Supreme Court has deemed that state's overcrowded facilities to be unconstitutional.

Unconstitutionality: Californian Prison System

Californian prisons are notoriously overcrowded and illustrate the failures of the prison system that result from excessive imprisonment. In May of 2011, the Supreme Court ruled that the poor conditions inside California's overcrowded prisons qualified as cruel and unusual punishment. In an attempt to improve conditions, the Supreme Court has ordered that California reduce its prison population by more than 30,000 inmates. The prison population will then stand at 110,000 prisoners, which is stillt 137% of the state's maximum capacity (Liptak, 2011).

To cope with overcrowding, California prison systems have transformed open gymnasiums into spaces for bunked beds and "telephone-booth-sized cages without toilets" (Liptak, 2011). This lack of personal space has led to increased tension, physical altercations, and riots, and fights (Gould, 2011). Additionally, statistics collected by California courts indicate that a prisoner "needlessly dies due to constitutional deficiencies every week" (Liptak, 2011). Overcrowding has also led to inadequate health care services for prisoners. Justice Kennedy declared, "A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society" (qtd. in Gould, 2011). These circumstances have compelled both federal courts and the Supreme Court to order a reduction of prisoner populations in California's thirty three state prisons.

Potential solutions in the works include moving non-serious, non-violent, and non-sex-crime inmates to county prisons. However, various public organizations and state lawmakers are arguing that this will still not resolve the greater crisis of too many prisoners and too few prisons. Rather, they are urging that the state change its "three-strikes-policy," which brings life-sentences for multiple offenses (Moore, 2009). At a 67% recidivism rate within three years of release, the highest in the nation, the California prison system is failing to help rehabilitate its inmates and is perpetuating a failing prison system.

Solitary Confinement

Over the past two decades, the use of solitary confinement as a form of punishment to isolate members of the prison community has been expanded in US prisons. The American Civil Liberties Union defines solitary confinement as

the practice of placing a prisoner alone in a cell for 22-24 hours a day with little

human contact or interaction; reduced or no natural light; restriction or denial of

reading material, television, radios and other property; severe limits on visitation;

and the inability to participate in group activities. Almost all human contact

occurs while the prisoner is in restraints and behind some sort of barrier. (End the

Use of Solitary Confinement, 2012).

There is a misconception that only the most dangerous prison gang members are exposed

to this form of punishment. Prisoners who have broken minor rules and are deemed a

nuisance, and children whose interest are protected by being isolated from other prisoners

for safety reasons, are also held in solitary confinement. In the forty-four states that

practice solitary confinement, there are 25,000 inmates held in some form of solitary

confinement. ("End the Overuse of Solitary Confinement," 2012).

In 2011, 1,500 prisoners of California's Pelican Bay prison held a hunger strike to

protest the use of solitary confinement. Prisoners at Pelican Bay are kept in six-by-eight

foot cells for twenty-three hours a day (Rudolf, 2011). Though the hunger strike had

lasted three weeks and few the demands were met, the protest brought national attention

to the abuse of solitary confinement in the US.

Internationally, the use of solitary confinement has been deemed "cruel,

inhumane, and degrading treatment" by organizations such as the United Nations and

European Court of Human Rights. Research done in the US and internationally has

shown that solitary confinement for years, sometimes amounting to decades, as thousand

of prisoners have experienced, can worsen mental illness and cause other forms of

psychological damage (Ridgeway, 2011).

In May of 2012, a lawsuit was filed by the Center for Constitutional Rights on behalf of Pelican Bay prisoners (Rudolf, 2012). The lawsuit challenges that the use of solitary confinement violates the eighth amendment regarding cruel and unusual punishment. Similar court cases are being filed across the country, including a class-action lawsuit filed by inmates at ADX, "the federal super-maximum-security prison in Florence, Colorado" (Goode, 2012). A hearing is currently being held at Capitol Hill before the Subcommittee on the Constitution, Human Rights and Civil Rights.

The overpopulation of American prisons has compromised the health and constitutional rights of its inmates. Unfortunately, it was necessary for the U.S prison population to reach a high of more than two million prisoners before the Supreme Court took action. Both overcrowding and the continued practice of solitary confinement are undermining the fundamental right of American prisoners.

Honduran Prison System

A Recent History of Honduras' Politics on the Prison System

       The history of the Honduras penal system is not well documented because of the political turmoil in that country. Political systems and events within the last century have varied, from military coups, heavy U.S. intervention, and a return to civilian rule. Since the 2009 military coup and exile of president Manuel Zelaya, Honduras has continued to be politically unstable. However, what is certain is that the inmate population has dramatically increased, from 3,365 in 1986 to nearly 13,000 in 2012 (Merrill, 1995). Multiple factors contribute to this dramatic rise, but most notable is that fifty-one percent of inmates have not yet been convicted and are in prison awaiting trail ("Human Rights Report: Honduras," 2010). Prison overcrowding has led to problems that are typical for most countries, including unsanitary housing and prison riots. Additionally, salient in Honduras' prisons, as consequences of overcrowding, are prisons being managed by inmates, and prison fires.

Prisoner Rights in Honduras

       The rights of prisoners and the responsibilities of the prison administration in Honduras are outlined in both its national constitution and the Criminal Rehabilitation Law. The National Constitution of Honduras states that the principle function of the country's prison system is to *"ensure public safety and to provide rehabilitation for its prisoners"* (Ferrara, 2006, 72).

In accordance with the Criminal Rehabilitation Law, a director manages each prison facility. The director, with the help of the administration and guards, is responsible for ensuring

1. the safety, order, discipline and health of the prisoners;
2. enforcement judges and officers represent the primary authority for protecting the prisoners. Their main functions are: to ensure that the prison administration respect the principle of legality and human rights while a sentence is being served. (Ferrara, 2006, 73)

Overcrowding and its Consequences in the Honduras Prison System

At total maximum capacity, the Honduras prison system can hold 8,000 inmates, but currently, the system is overburdened with 13,000 inmates ("Honduras: Overhaul Prison Conditions," 2012). Honduras' overcrowded jails have led to a plethora of problems including a lack of sanitary water systems, improper garbage disposal, and lack of sleeping space (Rice, 2012). These problems are universal to Honduras' twenty-four prisons and compromise the health of prisoners.

The unavailability of sanitary drinking water and the build up of garbage poses a health risk to many prisoners. Inmates are reduced to drinking water that is unclean or suffering from dehydration. Sewage from bathrooms is emptied into an open pit outside the cells and the lack of proper disposal has contributed to the unsanitary environment (Ferrara, 2006). Other threats include improper disposal of garbage. Prisoners complain that garbage pits build outside of prisoner cells and halls, which has led to an escalating rodent and pest problem. Such infestation is indicative of the unsanitary state of Honduras' prisons (Ferrara, 2006). These conditions are inconsistent with upholding the first clause of the Criminal Rehabilitation Law.

Prisoners who operate as the unofficial authorities in prison facilities, and prison

fires are two more recent problems caused by overcrowding in Honduras' prisons. Outlined in the Criminal Rehabilitation Law, one of the principle responsibilities of directors is to provide for the order and disciple of prisoners. However, each prison in Honduras openly operates as a business through prison dues, goods that are bought and sold, and a hierarchy managed by a prison boss. Individual reporters recount their experiences on a visit to San Pedro Sula prison in which there is a "free market bazaar selling everything from Iphones to prostitutes" (Rice, 2012). At this prison a line is drawn to demarcate where prisoners' authority operates and which guards cannot cross. The guards' main role is to provide external security and prevent prisoners from escaping (Rice, 2012). Though not every prison has a yellow line to indicate the domain of prisoner power, prisoners unofficially control the prison system at each prison in Honduras. Prisoner riots also jeopardize the safety of inmates. Gangs and bosses that operate in the prisons are notoriously violent. Reports have indicated that some inmates have been stabbed to death and decapitated; bosses who have abused their power have been decapitated and their internal organs fed to dogs ("Honduras Urged to Tackle Prison Turmoil," 2012). Guards and the administration do not provide the prisoners with disciple, and the prison bosses, gangs, and other members of the prison hierarchy largely manage the prison.

Prisons operating under the control of inmates and gangs are a systemic problem because the federal government itself is in turmoil and marked by instability. The lack of attention by the government has undermined funding for services for prisons. For example, the state provides about thirteen *lempras* or sixty cents a day for food. Prisoners would normally starve under this diet, but prisoners survive by getting food from markets

and restaurants inside the prison. Corruption is overlooked because profits from the prison operations help pay facility expenses such as gas and electricity (Rice, 2012).

Honduras prisons also neglect prison safety as exemplified by a fire that killed 361 inmates in February of 2012. This prison facility in Comayagua held three times the number of prisoners (Beale, 2012). Prison fire deaths have been a historic trend because of overcrowding, a lack of regulation, and because guards abandon prisoners locked in the cells. In 1994, 103 inmates, and in 2003, 20 inmates, were killed by prison fires (Beale, 2012). It is evident that guards are neglecting prisoners, either by leaving them to die in fires or by not exerting enough control over prison riots.

The overpopulation of Honduras' prisons and neglect on behalf of the government has compromised the health and safety of prisoners. Despite the regulations detailed in both the national constitution and other legislation, Honduras fails to meet the needs of its prisoners and overburdened prisons. The fundamental problems in Honduras' prisons indicate that reform of prison administration, facilities and a reduction in overcrowding are necessary to ensure prisoner health and safety.

South Africa Prison System

A Recent History of the Penal System in South Africa

The Republic of South Africa adopted a democratic government in 1994 after nearly half a century of the Apartheid regime. Between 1948 and 1994, almost two million black South Africans were imprisoned for opposing Apartheid (Dissel, 2002). Under Apartheid, black South Africans who committed crimes, such as being out after curfew in a white residential neighborhood or traveling without permission passes, were subject to imprisonment. The penal system was used to oppress any form of political dissent, and, once in prison, inmates were subject to harsh treatment. Members of the African National Congress, the main political opposition to Apartheid, were tortured and many killed (Mandela, 1994). The prison system was also subject to segregation and racial favoritism by which whites and blacks inmates were kept in different facilities, and whites were given larger portions of food, better housing and medical attention (Dissel, 2002). In 1994, after the Apartheid government gave up power to the African National Congress and president Nelson Mandela, a new democratic South Africa was established. On the political agenda was reform of the South African prison system because Mandela witnessed first hand the injustices of the penal system while having served twenty-six years in prison (Mandela, 1994).

Human Rights of Prisoners and Relevant Legislation

One of the initial duties of the new democracy in South Africa was to draft and publish a new permanent constitution that addressed the fundamental needs of all South Africans. Specific attention was given to the penal system, as exemplified by the integration of six departments working with the criminal justice system into a single

administrative department (Steinberg, 2005, 6). This integration created less bureaucracy for prisoners who needed to vocalize their complaints. One of the new rights spelled out in the constitution is of

> …everyone who is detained, including every sentenced prisoner...to conditions of detention consistent with human dignity, including…the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment. (Section 35(2)(e) of *The Constitution of the Republic of South Africa* Act 108 of 1996)

Other notable achievements with regard to prisoners' rights include the abolition of solitary confinement and the declaration of corporal punishment unconstitutional (Dissel, 2002).

Despite the passage of the new constitution, the South African government recognized that there was not enough protection provided for the legislative rights of prisoners. To address this problem, the government began working on new legislation, the Correctional Services Act. Though completed in 1998, the acts and its work would not fully be implemented until the early 2000s. As stated in the Correctional Services Act:

The purpose of the correctional system is to contribute to maintaining and projecting a just, peaceful and safe society by-

    (a) enforcing sentences of the courts in the manner prescribed by this Act;

    (b) detaining all prisoners in safe custody whilst ensuring their human dignity and;

    (c) promoting the social responsibility and human development of all prisoners and persons subject to community corrections. (Luyt, 2001)

South African Prisons and Overcrowding

The overcrowding of prisons is a problem that undermines the constitutional rights of inmates in South Africa. At official maximum capacity, South Africa's prisons can hold 118,154 prisoners. However, currently the prison population stands at 164,793 (ICPS: South Africa, 2011). On average prisons are nearly forty percent overcrowded, but overcrowding varies from prison to prison. In 2004, the Durban Medium C facility exceeded the maximum capacity by 387% and Umtata facility exceeded the maximum capacity by 377% (Steinberg, 2002, 2). Despite a new democratic system of government there was a rise in the prisoner population of 104,790 in 1992 to the high of 187,640 in 2004. Between 1992 and the dramatic increase of prisoners by 2004, the overall number of prosecutions decreased by 23% and convictions declined by 19% (Steinberg, 2002, 3). The cause of the overcrowding problem was people serving longer prison sentences. This trend was introduced in the mid 1990's through minimum sentencing laws and mandated life sentences for crimes such as murder and rape. Between 2000 and 2004, prisoners serving twenty years of more increased by 174% (Steinberg, 2002, 4).

Overcrowding is a violation of Section 35(2)(e) of the Constitution of the Republic of South Africa, Act 108, of 1996 because prisoners are not providing "conditions of detention consistent with human dignity." Overcrowding is inconsistent with respect for human dignity because the overpopulation of inmates in prisons has made prisoners susceptible to deathly diseases and illnesses.

The Consequences of Overcrowded Prisons in South Africa

About forty-one percent of all South African Prisoners have HIV, but this is a conservative estimate because many prisoners refuse to be tested due to the stigma

associated with AIDS (Stuijt, 2012). This statistic amongst prisoners is significantly higher than the overall population of South Africans with AIDS, which is twenty percent. Overcrowding can hinder efforts to deal with HIV because it intensifies the health problems of those who are already sick, and can also lead to more conditions that promote the spread of HIV.

An overcrowded and cramped environment also contributes to the spread of tuberculosis and other deadly diseases that prey on AIDS victims and worsens their overall health conditions (Shabangu, 2006). Tuberculosis easily spreads in environments where there are many people in close contact and poor sanitary conditions. Prisons all over the world have become a principle incubator for tuberculosis because of overcrowding and unsanitary conditions. Overcrowding can also lead to rape and other forced sexual activity that contribute the spread of HIV. There is a scarcity of resources such as blankets, pillows, and shoes because of overcrowding, and consequently, such goods can be traded for sexual favors and acts (Goyer, 2003). The lack of space and the sharing of beds due to overcrowding can also increase incidents of rape.

Because of this acute problem, the South Africa prison administration has been providing free AIDS treatment, but so far, only about 5,000 inmates have been provided treatment out of the estimated 72,000 infected prisoners (Stuijt, 2009). This neglect of the other tens of thousands of prisoners is a constitutional violation.

The overpopulation of South African prisons has been detrimental to the overall health of its prisoners, especially with regard to HIV. Despite constitutional guarantees of prisoner safety and decent medical treatment, the high rates of HIV amongst prisoners would indicate that the facts are otherwise. The South African prison system has made

significant advances with regard to the desegregation of its prisons, but the same

initiative should be taken to improve prison conditions and prisoner safety.

Conclusion

In theory, these developed and developing countries subscribe to a UN international agreement on prisoner rights and/or have established their own legislative policies that should ensure the rights of both citizens and prisoners. However, in practice, the overcrowding of prisons has undermined prisoners' rights. The consequences of overcrowding vary from country to country, but ultimately, the health and wellbeing of prisoners are jeopardized and threatened. In France, suicides rates have been at an all time high in recent years. Despite governmental efforts such as "anti-suicide kits," the government has not tackled the fundamental problem of overcrowding and understaffing. As a result of overcrowding, and without enough medical staff to evaluate the mental wellbeing of prisoners, suicides that could have prevented were overlooked. The UK prison system is severely overpopulated and shows that even highly developed countries are susceptible to the consequences associated with overpopulation. Problems such as understaffing, inadequate space for prisoners, and neglect for mental care, perpetuate violence and recidivism in the UK prison system. In the United States and especially in the state of California, overcrowded prisons undermine the health of prisoners, and have garnered the reprimand of the Supreme Court. Californian prison facilities were declared in violation of the eighth amendment against cruel and unusual punishment. Additionally, the use of solitary confinement by prisons across America is being challenged as unconstitutional. Civil rights groups have claimed that the effects of solitary confinement are detrimental to the mental health and

wellbeing of prisoners. In Honduras the prisons have a maximum capacity of 8,000 inmates, but currently, there are nearly 13,000 people in Honduras prisons. This overpopulation has severely damaged the infrastructure of the prisons and inmates do not have access to basic necessities such as clean water. Furthermore, prison guards have abandoned all forms of discipline and order, so prisoners manage the prisons. In recent years, Honduras has also received international criticism because of the increasing prevalence of prison fires. In March, nearly four hundred prisoners died when guards left prisoners in their cells during a fire. Citizens in Honduras and the international community are aware of the problems in their prisons, but there has been little progress. When South Africa transitioned from the Apartheid regime to a democratic system, prison reform was a priority of the new government. Despite new facilities and more money being put into the system, prisons are still overcrowded and have caused innumerable problems related to housing and health. A more serious consequence of overcrowded prisons in South Africa is the prevalence of HIV infection, which is estimated at forty percent of all prisoners. Though treatment is being administered, as a recent development on behalf the government, only 5,000 of the estimated 72,000 prisoners are being treated.

As exemplified by the United States, France, and England, highly developed countries are also susceptible to challenges within the country at large when human and constitutional rights are disregarded. Honduras and its prison system is representative of developing governments that allow prison overpopulation and neglect their penal system. Without enough funding and proper training for guards, Honduras' prisoners manage themselves and the prison cannot serve its purpose of

rehabilitating inmates. Thus criminals and criminal activity will continue to persist in these systems unless the government takes action. Lastly, South Africa exemplifies countries that are making strides towards fixing their criminal justice system. However, because of overpopulation and over-burdened prisons, their efforts are severely undermined by problems affecting the health and the overall wellbeing of prisoners.

Regardless of levels of economic or political development, it is evident that overpopulated prisons have brought about a crisis that cannot be solved by imprisoning more citizens. Rather, countries should work toward abiding by the human and constitutional rights they promise if they are to avoid further penal crisis. The fundamental problems in these and other nations' prisons indicate that a reduction in overcrowding is necessary to ensure prisoner health and safety.

Countries of various economic, political, and development backgrounds suffer from various consequences of overcrowding. Ultimately, the source of these problems is the same—overcrowding. Because these countries share the same cause of prison problems, a collaborative effort by all effected countries to resolve the problem of prison overcrowding should be undertaken. In particular, effective alternatives to prison need to be developed as a means of reducing prison populations. Crime is a problem that leaves no communities or countries untouched. Prisons may protect communities in the short term, but prisons around the world are failing to rehabilitate inmates. A new collaborative commitment by these countries should not only aim to reduce prison populations, but prevent overpopulation from recurring in the future by creating prisons that offer humane conditions and adequate staffing to reduce rather than foster recidivism. Only then will

countries be able to help themselves and all their citizens by helping the most vulnerable

members of their citizenry—prisoners.

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