

## PRISONER HUMAN RIGHTS ADVOCACY

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\*\* Sara Godchaux, Staff Attorney at the Southern Poverty Law Center in New Orleans, Louisiana. Those interested in further study in this area would profit, as we do, from reviewing the following: Caroline Bettinger-Lopez, *Primer on the Inter-American Human Rights System*, 42 CLEARINGHOUSE REV., Number 11-12 (March-April 2009); Alvin J. Bronstein & Jenni Gainsborough, *Using International Human Rights Laws and Standards for US Prison Reform*, 24 PACE L. REV. 811 (2004); Martha F. Davis, Johanna Kalb & Risa E. Kaufman, HUMAN RIGHTS ADVOCACY IN THE UNITED STATES (West Academic Publ'g 2014); Jenni Gainsborough, *Women in Prison: International Problems and Human Rights Based Approaches to Reform*, 14 WM. & MARY J. WM. & L. 271 (2007); Martin A. Geer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections under Domestic Civil Rights law – A Case Study of Women in United States Prisons*, 13 HARV. HUM. RTS. J. 71 (2000); Deborah Labelle, *Bringing Human Rights Home to the World of Detention*, 40 COLUM. HUM. RTS. REV. 79 (2008); Deborah LaBelle, *Ensuring Rights for All: Realizing Human Rights for Prisoners*, BRINGING HUMAN RIGHTS HOME, VOLUME 3: PORTRAITS OF THE MOVEMENT (Praeger Publ'n 2008); Sara A. Rodriguez, *The Impotence of Being Earnest: Status of the United Nations Minimum Rules for the Treatment of Prisoners in Europe and the United States*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 61 (2007); Gwynne Skinner, *Bringing International Law to Bear on the Detention of Refugees in the United States*, 16 WILLAMETTE J. INT'L L. & DISP. RESOLUTION 270 (2008); BRINGING HUMAN RIGHTS HOME (Cynthia Soohoo, Catherine Albisa & Martha Davis, eds. Praeger Publishing 2008); Dirk van Zyl Smit, *Regulation of Prison Conditions*, 39 CRIME AND JUST. 503, 549-553 (2010); Eric Tars, *Who Knows What Lurks in the Hearts of Human Rights Violators? The Shadow (Reporter) Knows--Human Rights Shadow Reporting: A Strategic Tool for Domestic Justice*, 42 CLEARINGHOUSE REV. 475 (2009); Kim P. Turner, *Raising the Bars: A Comparative Look at Treatment Standards for Mentally Ill Prisoners in the United States, United Kingdom, and Australia*, 16 CARDOZO J. INT'L & COMP. L. 409, 442-444 (2008); Jeanne M. Woods & Hope Lewis, HUMAN RIGHTS AND THE GLOBAL MARKETPLACE: ECONOMIC, SOCIAL AND CULTURAL DIMENSIONS (Transnational Publ. 2005).

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## I. INTRODUCTION

Every hour of every day, in every city and county in this country, people are degraded, mistreated, and abused in and by our jails and prisons. United States courts offer only very narrow and extremely costly opportunities for prisoners to seek justice. Human rights advocacy is not a magic solution to these widespread injustices. Nevertheless, it does offer another option for prisoners to tell their stories about how they experience injustice to people who actually care about human rights. This article shows how human rights advocacy, despite U.S. opposition to international human rights protections for prisoners, can be a useful tool to challenge ongoing injustices faced by prisoners.

Because the United States is the prison capital of the world, advocacy for and with prisoners is critical.<sup>1</sup> Traditional litigation for prisoners has made great strides, but is extremely costly, lawyer intensive, and time consuming. The courts and Congress have also intentionally made prisoner litigation difficult.

Historically, the U.S. Constitution has been a major source of protection for prisoners' rights in this country.<sup>2</sup> The Constitution protects prisoners and courts can, and will, hold jail administrators, supervisors, and the like accountable for violation of inmates' rights. Although constitutional advocacy has been successful to improve prison conditions and otherwise protect many rights of prisoners over the last several decades, prison conditions in which prisoners exist in the U.S. remain horrendous.<sup>3</sup>

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1. Roy Walmsley, *World Prison Population List (tenth edition)*, INT'L. CENTRE FOR PRISON STUDIES, A PARTNER OF THE UNIV. OF ESSEX (2013), [http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl\\_10.pdf](http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf).

2. For a more detailed description of the history of prisoners' rights in this country, see Roberta M. Harding, *In the Belly of the Beast: A Comparison of the Evolution and Status of Prisoners' Rights in the United States and Europe*, 27 GA. J. INT'L & COMP. L. 1, 7-21 (1998).

3. See generally Sharon Dolovich, *Foreword: Incarceration American-Style*, 3 HARV. L. & POL'Y REV. 237 (2009); Sharon Dolovich, *Exclusion and Control in the Carceral State*, 16 BERKELEY J. CRIM. L. 259 (2011); *A Nation Behind Bars: A Human Rights Solution*, HUM. RTS. WATCH (May 6, 2014), [http://www.hrw.org/sites/default/files/related\\_material/2014\\_US\\_Nation\\_Behind\\_Bars\\_0.pdf](http://www.hrw.org/sites/default/files/related_material/2014_US_Nation_Behind_Bars_0.pdf).

Despite these critical ongoing problems in our jails and prisons, Congress and the courts continue to severely limit the protections and remedies available for prisoners.<sup>4</sup> Constitutional litigation has tremendous power and can make long-lasting impact, but prisoners often do not have access to these remedies because of the cost, time and scarcity of lawyers involved.<sup>5</sup> Increased human rights advocacy, as the examples below indicate, can offer lower cost alternative ways to challenge solitary confinement, mistreatment of juveniles, better protections for women prisoners and opportunities for organizing against the injustices of the prison system.

The U.S. has the highest incarceration rate per capita in the entire world at 707 prisoners per 100,000 people.<sup>6</sup> It also has the largest number of people behind bars with 2.2 million people in local jails and state and federal prisons.<sup>7</sup> While the United States only makes up 5% of the world's population, it incarcerates approximately 25% of the world's prisoners.<sup>8</sup>

To put these rates into international perspective, compare the United States' incarceration rate of 707 per 100,000 people to some other countries' incarceration rates: Mexico -- 214 per 100,000 people; Canada -- 118 per 100,000 people; England -- 148 per 100,000; Russia -- 467 per 100,000 people; China -- 124 per

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4. Marissa C.M. Doran, *Lawsuits as Information: Prisons, Courts, and A Troika Model of Petition Harms*, 122 YALE L.J. 1024, 1036-42 (2013) (showing the push for limitations on prisoner litigation under the Prison Litigation Reform Act); see also David M. Adlerstein, *In Need of Correction: The "Iron Triangle" of the Prison Litigation Reform Act*, 101 COLUM. L. REV. 1681 (2001); *No Equal Justice: The Prison Litigation Reform Act in the United States*, HUM. RTS. WATCH (June 17, 2009), <http://www.hrw.org/sites/default/files/reports/us0609web.pdf> (this report documents the negative effect of the PRLA which has resulted in numerous dismissals of prisoner rights cases in federal courts).

5. Alvin J. Bronstein & Jenni Gainsborough, *Using International Human Rights Laws and Standards for U.S. Prison Reform*, 24 PACE L. REV. 811 (2004); see generally Deborah Labelle, *Bringing Human Rights Home to the World of Detention*, 40 COLUM. HUM. RTS. L. REV. 79 (2008) (Labelle is one of the trailblazers in the use of human rights in domestic litigation, and in this article she outlines how this can be done.).

6. *World Prison Brief: United States of America*, INT'L CENTRE FOR PRISON STUDIES, <http://www.prisonstudies.org/country/united-states-america> (last visited April 7, 2015).

7. *Id.* According to the U.S. Bureau of Justice Statistics, in 2012, the United States held 744,524 people in local jails and 1,483,900 people in state or federal prisons. *Id.*

8. *Mass Incarceration Problems*, AM. CIV. LIBERTIES UNION (2012), [https://www.aclu.org/files/assets/massincarceration\\_problems.pdf](https://www.aclu.org/files/assets/massincarceration_problems.pdf).

100,000 people.<sup>9</sup>

The United States has not always had such a high prison rate. In fact, in 1980, the United States' total jail and prison population was a mere 501,886 people.<sup>10</sup> This means that the number of United States prisoners has increased by over 300% since 1980.<sup>11</sup> Interestingly, this exponential growth does not correlate with either the infinitely smaller general population growth of the United States nor crime rates over the same time period. Since 1980 the U.S. population has grown from 227 million to 318 million people, only a 39 percent increase.<sup>12</sup> In the same time period, both the number and rate of crime has decreased.<sup>13</sup>

As the United States continues to lead the world in incarceration, United States prisoners continue to suffer human rights abuses and other issues regarding their treatment, safety, and health. Prison rape, the overuse of solitary confinement, prison overcrowding, inhumane and substandard conditions of confinement, lack of access to medical and psychological care are just a handful of the problems plaguing our prisons and affecting our millions of prisoners.

For example, sexual assault behind bars affects one in ten juveniles, and despite severe underreporting, four percent of state and federal inmates reported sexual abuse in 2011-2012.<sup>14</sup> That

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9. *Highest to Lowest – Prison Population Rate*, INT'L CENTRE FOR PRISON STUD., [http://www.prisonstudies.org/info/worldbrief/wpb\\_stats.php?area=all&category=wb\\_poprate](http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poprate) (last visited Feb. 20, 2015).

10. James Austin, *Ending Mass Incarceration: Charting a New Justice Reinvestment*, AM. CIV. LIBERTIES UNION, \*2, [https://www.aclu.org/files/assets/charting\\_a\\_new\\_justice\\_reinvestment\\_final\\_0.pdf](https://www.aclu.org/files/assets/charting_a_new_justice_reinvestment_final_0.pdf) (last visited Feb. 20, 2015).

11. *Id.*

12. See 2014 data at *State & County Quickfacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/00000.html> (last visited Feb. 20, 2015). For 1980, see *Historical National Population Estimates*, U.S. CENSUS BUREAU (June 28, 2000), <http://www.census.gov/popest/data/national/totals/pre-1980/tables/popclockest.txt>.

13. *Table 302. Crimes and Crime Rates by Type of Offense: 1980 to 2008*, U.S. CENSUS BUREAU (2011), <http://www.census.gov/compendia/statab/2011/tables/11s0302.pdf>.

14. Jamie Fellner, *Stop Prison Rape Now*, HUM. RTS. WATCH (Sept. 4, 2013), <http://www.hrw.org/news/2013/09/04/stop-prison-rape-now>; David Kaiser & Lovisa

means approximately 60,000 inmates are sexually assaulted by other inmates or staff every year according to the Bureau of Justice Statistics.<sup>15</sup> Likewise, the last few decades have seen an explosion in the use of solitary confinement in prisons in the United States.<sup>16</sup> Experts estimate that approximately 80,000 prisoners are held in some form of solitary confinement.<sup>17</sup>

Accomplishing the task of prison reform in order to overcome these injustices in the prison system is a daunting task. However, a potential and promising solution to these problems is that of supporting and promoting human rights. Human rights advocacy can be a powerful opportunity for prisoners to put the injustices before the public, a useful supplement to litigation, and a low cost alternative tool to highlight and address continuing violations of prisoners' rights.<sup>18</sup> This paper will provide an overview of basic human rights; discuss the various human rights that are afforded to prisoners; examine the workings of the U.N. Human Rights Advocacy; and conclude with prisoner advocacy under the Inter-American Commission on Human Rights.

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Stannow, *The Shame of Our Prisons: New Evidence*, NEW YORK REV. BOOKS (Oct. 24, 2013), <http://www.nybooks.com/articles/archives/2013/oct/24/shame-our-prisons-new-evidence/>.

15. Allen J. Beck, Marcus Berzofsky, Rachel Caspar & Christopher Krebs, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12: National Inmate Survey*, U.S. DEPT OF JUSTICE: BUREAU OF JUSTICE STATISTICS, NCJ 241399 (May 2013), <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.

16. Shira E. Gordon, Note, *Solitary Confinement, Public Safety, and Recidivism*, 47 U. MICH. J. L. REFORM 495, 495-502 (2014).

17. Sal Rodriguez, *FAQ*, SOLITARY WATCH: NEWS FROM A NATION IN LOCKDOWN (2012), <http://solitarywatch.com/facts/faq/>.

18. Alvin J. Bronstein & Jenni Gainsborough, *The International Context of U.S. Prison Reform: Using International Human Rights Laws and Standards for U.S. Prison Reform*, 24 PACE L. REV. 811 (2004).

Martin A. Geer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections under Domestic Civil Rights Law – A Case Study of Women in United States Prisons*, 13 HARV. HUM. RTS. J. 71 (2000).

Martha F. Davis, *Law, Issue Frames and Social Movements: Three Case Studies*, 14 U. PA. J.L. & SOC. CHANGE 363, 370-377 (2011) (Professor Davis illustrates how a human rights frame can guide domestic social justice advocacy with three examples: the Poverty Law movement of the 1960s; the Maryland Legal Aid Bureau; and the National Center on Homelessness and Poverty).

Early civil rights litigators looked to human rights advocacy when the courts were hostile. For example, in 1946, a human rights complaint was filed with the United Nations to force the US to eliminate racial discrimination. Raymond M. Brown, *The Civil Rights Movement's Early Embrace of Human Rights*, NEW JERSEY LAWYER, THE MAGAZINE, Feb. 2014.

## II. A HUMAN RIGHTS APPROACH TO INJUSTICE

Human rights are basic privileges and fundamental freedoms that are inherent to all human beings, meaning all people of all nations are entitled to them regardless of race, nationality, place of residence, sex, national or ethnic origin, religion, language, or any other status.<sup>19</sup> They are, as one of the pioneers in U.S. human rights advocacy proclaimed, “A source of social justice in the US.”<sup>20</sup>

These rights include civil and political rights such as the right to life, liberty and freedom of expression. They also entail social, cultural and economic rights including the right to food, the right to work, and the right to receive an education.<sup>21</sup> These basic rights are expressed and protected by international norms, conventions, treaties, guiding principles, and other sources of international law.<sup>22</sup> States in every region of the world have signed and ratified international and regional treaties, conventions, and rules confirming these basic human rights.<sup>23</sup>

Sources for these rights include the charter of the United Nations, the Universal Declaration of Human Rights, the

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19. Rhonda Copelon, *The Indivisible Framework of International Human Rights: A Source of Social Justice in the U.S.*, 3 N.Y. CITY L. REV. 59 (1998); Catherine Powell, *Introduction: Locating Culture, Identity and Human Rights*, 30 COLUM. HUM. RTS REV. 201 (1999); see also Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U.L. REV. 1 (1982) (Sohn provides an excellent historical and political overview of the development of human rights laws); see also *Human Rights Basics*, AMNESTY INT’L, <http://www.amnestyusa.org/research/human-rights-basics> (last visited Feb. 10, 2015); see also *What are human rights?*, UNITED NATIONS HUM. RTS., OFFICE OF THE HIGH COMMISSIONER FOR HUM. RTS., <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (last visited Feb. 19, 2015).

20. See Copelon, *supra* note 19.

21. *Human Rights Basics*, *supra* note 19.

22. *Id.*

23. *Making Standards Work*, PENAL REFORM INT’L (1995), <http://www.penalreform.org/wp-content/uploads/2013/05/man-2001-making-standards-work-en.pdf>; see also *The Foundation of International Human Rights Law: The Universal Declaration of Human Rights*, UNITED NATIONS, [http://www.un.org/en/documents/udhr/hr\\_law.shtml](http://www.un.org/en/documents/udhr/hr_law.shtml) (last visited Mar. 26, 2015) (“Today, all United Nations member States have ratified at least one of the nine core international human rights treaties, and 80 percent have ratified four or more, giving concrete expression to the universality of the UDHR and international human rights.”).

International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the adoption of dozens of additional declarations and covenants including the U.N. Convention against Torture.<sup>24</sup>

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948 following the end of the Second World War, is generally agreed to be the foundational document of international human rights law.<sup>25</sup> The UDHR set forth the basic civil, political, economic, social, and cultural rights and fundamental freedoms that all human beings should enjoy.<sup>26</sup> Originally, the UDHR was merely meant to be a non-binding statement of principles.<sup>27</sup> Today, many of its provisions are so widely accepted that they have taken on the status of customary international law. Its principles have been reiterated, codified, and made binding on states in subsequent treaties.<sup>28</sup> The UDHR has inspired more than 80 international human rights treaties and declarations, as well as other international instruments such as guidelines and principles which serve to facilitate the understanding, implementation and further development of international human rights law, and a great number of regional human rights conventions, as well as domestic human rights bills and constitutional provisions.<sup>29</sup>

Any analysis of human rights advocacy in the U.S. must acknowledge the resistance of the government to be bound by international standards protecting prisoners.<sup>30</sup> While the U.S.'s

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24. Sohn, *supra*, note 19, at 11-12.

25. Michael J. Perry, *The Morality of Human Rights*, 50 SAN DIEGO L. REV. 775 (2013).

26. *Id.*

27. Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 317-318 (1995-96); see also, Ben Saul, *In the Shadow of Human Rights: Human Duties, Obligations, and Responsibilities*, 32 COLUM. HUM. RTS. L. REV. 565, 604 (2001).

28. Sohn, *supra*, note 19, at 32.

29. *The Foundation of International Human Rights Law: The Universal Declaration of Human Rights*, UNITED NATIONS (Sept. 16, 2014), [http://www.un.org/en/documents/udhr/hr\\_law.shtml](http://www.un.org/en/documents/udhr/hr_law.shtml) (last visited Mar. 26, 2015).

30. The U.S. has failed to sign or ratify several of the most significant international human rights treaties – and even those it has ratified were adopted with a package of reservations, understandings and declarations that purport to limit the domestic impact of these rights. Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT'L L. 341 (1995). Generally, the U.S. is more resistant to these norms than many of the world's governments. See Dirk van Zyl Smit, *Regulation of Prison Conditions*, 39 CRIME & JUST. 503, 549-53 (2010) (explaining international comparisons and the U.S.'s role).

position makes it challenging to do so, these protections can be and are raised in federal court litigation.<sup>31</sup> While human rights are sometimes described as “soft law” because they are often found in non-binding international documents and are consequently difficult to enforce,<sup>32</sup> they are international norms, which can be useful advocacy tools to challenge government abuses.

Further, even when the U.S. ratifies human rights treaties, it does so with a set of reservations, understandings and declarations (RUDS), which restrict the ability of courts to apply the treaties.<sup>33</sup> Human rights advocacy has also proven to be an important part of social movements like the successful campaign of the Coalition of Immokalee Workers in Florida, and the Poor People’s Economic Human Rights Campaign.<sup>34</sup>

### III. OVERVIEW OF UNITED NATIONS HUMAN RIGHTS FOR PRISONERS

All persons are entitled to the protections of human rights, including prisoners.<sup>35</sup> While some liberties are lost when a person

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31. See generally MARTHA F. DAVIS, JOHANNA KALB, & RISA E. KAUFMAN, HUMAN RIGHTS ADVOCACY IN THE UNITED STATES 123 (West Academic Pub. 2014); see also Johanna Kalb, *Human Rights Treaties in State Courts: The International Prospects of State Constitutionalism after Medellin*, 115 PENN STATE L. REV. 1051, 1051-52 (2011); Martha F. Davis, *The Spirit of Our Times: State Constitutions and International Human Rights*, 30 N.Y.U. REV. L. & SOC. CHANGE 359, 370-71 (2006) (“Even if a treaty is deemed non-self-executing, the United States and its constituent states are still bound by it. As such, a court considering the legality of government action must take such treaty obligations into account. Even on the federal level, the non-self-executing nature of a treaty simply precludes private enforcement action and use of the treaty to secure jurisdiction. It does not bar judicial consideration and enforcement of the treaty’s terms once a cause of action and jurisdiction is secured on some other basis.”).

32. Gunther F. Handl, et al., *A Hard Look at Soft Law*, 82 AM. SOC’Y INT’L L. PROC. 371 (1988).

33. David Sloss, *Using International Law to Enhance Democracy*, 47 VA. J. INT’L L. 1, 3 (2006).

34. Martha Davis, *The Pendulum Swings Back: Poverty Law in the Old and New Curriculum*, 34 FORDHAM URB. L.J. 1391, 1410-11 (2007). For additional examples, see Martha Davis, *Law, Issue Frames and Social Movements: Three Case Studies*, 14 U. PA. J. L. & SOC. CHANGE 363, 363-64 (2011) (describing examples of human rights lawyering in social change movements).

35. Martin A. Geer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections under Domestic Civil Rights Law – A Case Study of Women in United States Prisons*, 13 HARV. HUM. RTS. J. 71,

is imprisoned, that does not mean that prisoners may be denied their human rights or dignity.<sup>36</sup>

Human rights for prisoners are based on many international sources, starting with the 1948 Universal Declaration of Human Rights (UDHR), which promised “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>37</sup>

The 1976 International Covenant on Civil and Political Rights (ICCPR) (a component of the International Bill of Rights) contains a number of protections for prisoners including the requirement that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>38</sup> While the U.S. has ratified the ICCPR, it only did so with reservations to limit the protections to that which is protected by the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution.<sup>39</sup> This, and the fact that the treaty is not self-executing and Congress has not yet approved the implementing legislation, has the effect of limiting its protections for U.S. prisoners.<sup>40</sup> However, international protections can still be helpful with domestic litigation in determining the current standards of decency.<sup>41</sup>

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116 (2000) (“There are as many as seventeen conventions, declarations and principles under international human rights law which may be sources of protection for US women prisoners...”); Sara A. Rodriguez, *The Impotence of Being Earnest: Status of the United Nations Standard Minimum Rules for the Treatment of Prisoners in Europe and the United States*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 61 (2007) (notes that the U.S. is not doing a very good job of conforming to these principles but they are still important tools when combined with domestic enforcement).

36. Suzanne M. Bernard, *An Eye for an Eye: The Current Status of International Law on the Humane Treatment of Prisoners*, 25 RUTGERS L. J. 759, 760-61 (1994).

37. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter Universal Declaration of Human Rights].

38. International Covenant on Civil and Political Rights, art. 10 (1), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976, adopted by the United States Sept. 8, 1992), available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> [hereinafter International Covenant on Civil & Political Rights].

39. John Quigley, *Criminal Law and Human Rights: Implications of the United States Ratification of the International Covenant on Civil and Political Rights*, 6 HARV. HUM. RTS. J. 59, 71 (1993).

40. Susanna Y. Chung, *Prison Overcrowding: Standards in Determining Eighth Amendment Violations*, 68 FORDHAM L. REV. 2351, 2376-77 (2000).

41. *Id.* at 2376, 2396-2400.

Following the 1976 ratification of the ICCPR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was enacted in 1984 to prohibit intentional infliction of severe physical or mental pain and suffering.<sup>42</sup> CAT requires each nation to report every four years on what they have done to comply.<sup>43</sup> The U.S. has also ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which prohibits racial, ethnic and national origin discrimination.<sup>44</sup>

The U.S. ratifies treaties in such a way that the treaty bodies cannot consider individual complaints against the U.S. The only way these issues come before the treaty bodies is through periodic treaty reviews. The bodies that monitor treaty reports frequently publish helpful general comments that interpret the treaties they oversee.<sup>45</sup> Participation by advocates in these processes can also be helpful for groups as part of their overall strategy to articulate their positions before international bodies and garner media attention for their causes.<sup>46</sup>

The United Nations has also endorsed Standard Minimum Rules for the Treatment of Prisoners, which was first formally

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42. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 19, *opened for signature* December 10, 1984, 1465 U.N.T.S. 85; G.A. Res. 34/169, art. 5, U.N. Doc. A/RES/169 (entered into force June 26, 1987) [hereinafter Convention against Torture].

43. *Id.*

44. Audrey Daniel, *The Intent Doctrine and CERD: How the United States Fails to Meet Its International Obligations in Racial Discrimination Jurisprudence*, 4 DEPAUL J. FOR SOC. JUST. 263 (2011).

45. Compare Committee against Torture, *Concluding observations on the third to fifth periodic reports of the United States of America*, ¶ 15, 1364th and 1267th Sess., Nov. 12-13, 2014, and adopted at 1276th and 1277th Sess., Nov. 20, 2014, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014) (where the report concludes with the comments by the Committee against Torture on the recent periodic reports by the US), *available at* <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuLMmIdNURtE47fFHU%2bcDW3YqC%2f3zHkM7HdrMe8Ha0T3LrxFZw2DBuPPjJtmrR1GUBC%2fjzvD8gcT%2fCPPgMygXRPgJD4yWY90dyGDoPyZiQO4>, with Laurence Helfer, *Forum Shopping for Human Rights*, 148 U. PA. L. REV. 285, 362 (1999).

46. The Advocates for Human Rights, *Chapter 9. Advocacy at the United Nations*, \*199, [http://www.theadvocatesforhumanrights.org/uploads/ch\\_9\\_2.pdf](http://www.theadvocatesforhumanrights.org/uploads/ch_9_2.pdf) (last visited Mar. 18, 2015).

approved by the Economic and Social Council in 1957.<sup>47</sup> These standards, while not having the force of law in the U.S., are “an important [international] point of reference” for the rights of prisoners.<sup>48</sup> Additionally, there are a number of other principles, codes, committee reports, and resolutions that provide the foundation for the protection of human rights of prisoners.<sup>49</sup>

In 2005, the United Nations High Commissioner on Human Rights (UNHCR) published an excellent four part series on human rights and prisons designed to teach prison officials, worldwide, what their duties were under international human rights law.

This manual provides an in-depth examination of the standards and sources of human rights in prisons. The first component is a 222 page manual on human rights training for prison officials.<sup>50</sup> The second part of the package is a 362 page compilation of international human rights instruments concerning the administration of justice.<sup>51</sup> The third part is a 198 page trainer’s guide which provides instructions and tips for training prison officials.<sup>52</sup> The final part is a 34 page pocketbook of international human rights standards designed to be an accessible and portable reference for prison officials.<sup>53</sup>

47. Bernard, *supra* note 36, at 770-75 (discussing the origins of these the Standard Minimum Rules and her elaboration on how to implement the human rights afforded to prisoners. These Rules were drafted in 1933 by the International Penal and Penitentiary Commission and approved by the Assembly of the League of Nations in 1934. Further, they were revised and approved by the Economic and Social Council (ECOSOC) in 1957. Still, the Rules are not legally binding and do not have the force of law. The goal of establishing SMR was to encourage their enactment in national penal codes. They established minimum guidelines, which may be adapted to the political, economic and social and legal circumstances of individual countries.)

48. *Id.* at 775; see also Sara A. Rodriguez, *The Impotence of Being Earnest: Status of the United Nations Minimum Rules for the Treatment of Prisoners in Europe and the United States*, 33 NEW ENGL. J. ON CRIM. & CIV. CONFINEMENT 61 (2007) (noting that the U.S. does not do a good job of conforming to these principles but they are still important tools when combined with domestic enforcement).

49. Bernard, *supra* note 36, at 775-90.

50. U.N. HIGH COMM’N FOR HUM. RTS., HUM. RTS. & PRISONS: MANUEL ON HUM. RTS. TRAINING FOR PRISON OFFICIALS, U.N. Sales No. E.04.XIV.1 (2005).

51. U.N. HIGH COMM’N FOR HUM. RTS., HUM. RTS. & PRISONS: A COMPILATION OF INT’L HUM. RTS. INSTRUMENTS CONCERNING THE ADMIN. OF JUST., U.N. Sales No. E.04.XIV.4 (2005).

52. U.N. HIGH COMM’N FOR HUM. RTS., HUM. RTS. & PRISONS: TRAINER’S GUIDE ON HUM. RTS. TRAINING FOR PRISON OFFICIALS, U.N. Sales No. E.04.XIV.6 (2005).

53. U.N. HIGH COMM’N FOR HUM. RTS., HUM. RTS. & PRISONS: A POCKETBOOK OF INT’L HUM. RTS. STNDS. FOR PRISON OFFICIALS, U.N. Sales No. E.04.XIV.5 (2005).

The following sections describe the types of protections afforded to prisoners under international human rights law. These principles and standards are certainly not an exhaustive list, but are meant to be a survey of what types of protections are available for prisoners under international human rights law and a starting place for those interested in using international human rights law as a basis for prison reform and the augmentation of prisoner rights.

#### A. Protection of Prisoners from Torture and Mistreatment

One of the most basic tenets of international human rights law is that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,” including prisoners.<sup>54</sup> There are no exceptions to this rule and no exceptional circumstances can be invoked as justification for the use of torture.<sup>55</sup>

Under international law, “torture” is defined 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, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other

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54. Universal Declaration of Human Rights, *supra* note 37; Int’l Covenant on Civ. & Political Rts., art. 7, Mar. 23, 1976, U.N.T.S. No. 14668, vol. 999, p. 171; Convention against Torture, *supra* note 42, art. 5; *see, e.g.*, Convention against Torture, *supra* note 42, preamble, art. 16(1) (“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts or cruel, inhuman or degrading treatment or punishment. . . .”); *id.* art. 5 (“No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. . . .”); Int’l Covenant on Civ. & Political Rts., art. 7, Mar. 23, 1976, U.N.T.S. No. 14668, vol. 999, p. 171 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. . . .”); G.A. Res. 43/173, Prin. 6, U.N. Doc. A/RES/173 (Dec. 9, 1988) (“No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. . . .”).

55. Convention against Torture, *supra* note 42, art. 2.2 (“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”).

person acting in an official capacity....”<sup>56</sup> This prohibition of torture in international law is clear.

Human rights law also prohibits other mistreatment of prisoners by other acts of cruel, inhuman or degrading treatment or punishment that does not amount to torture.<sup>57</sup> Law enforcement officials, including prison officials, are only permitted to use force when it is strictly necessary.<sup>58</sup>

States, as well as refraining from acts of torture and mistreatment, have a duty to undertake comprehensive measures to prevent torture or any other mistreatment of prisoners.<sup>59</sup> As set forth in more detail below and in the particular applicable treaties, this includes: (1) adequate training of prison staff, directly involved in the custody, interrogation or treatment of prisoners;<sup>60</sup> (2) investigating claims of torture and, prosecuting perpetrators;<sup>61</sup> and (3) ensuring that victims have access to safe and effective complaint procedures, compensation and rehabilitation.<sup>62</sup>

All prison officials must be fully informed, educated, and trained about the prohibition of torture and other mistreatment.<sup>63</sup> Prison officials cannot cite to orders from a superior officer as a justification of torture.<sup>64</sup>

Any prisoner who alleges that he or she has been subjected to torture or other mistreatment has the right to file a complaint which must be promptly and impartially examined by competent authorities.<sup>65</sup> Furthermore, steps must be taken to ensure that the complainant and witnesses are protected against

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56. Convention against Torture, *supra* note 42, art. 1 (Note that mental suffering is included. This is important for implications for the use of solitary confinement. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.).

57. *Id.* art. 16.

58. G.A. Res. 34/169, art. 3, U.N. Doc. A/RES/34/169 (Dec. 9, 1988).

59. See PENAL REFORM INTERNATIONAL, TORTURE PREVENTION: KEY FACTS <http://www.penalreform.org/priorities/torture-prevention/key-facts/> (last visited Feb. 9, 2015).

60. Convention against Torture, *supra* note 42, art. 10.

61. *Id.* art. 12.

62. *Id.* art. 14. See generally PENAL REFORM INTERNATIONAL, TORTURE PREVENTION: KEY FACTS <http://www.penalreform.org/priorities/torture-prevention/key-facts/> (last visited Feb. 9, 2015).

63. Convention against Torture, *supra* note 42, art. 10.

64. *Id.* art. 2.

65. *Id.* art. 13.

all mistreatment or intimidation as a consequence of his complaint or any evidence given.<sup>66</sup>

### B. Guarantee of an Adequate Standard of Living and Conditions of Confinement

All prisoners are guaranteed the right to an adequate standard of living, which includes food, drinking water, living space, clothing and bedding.<sup>67</sup> This guarantee to prisoners is derived from the Universal Declaration of Human Rights, which provides: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services. . . .”<sup>68</sup>

The Standard Minimum Rules (“SMR”) and other conventions contain several articles detailing specific standards that must be met in order to fulfill the guarantee to an adequate standard of living for all prisoners. As for clothing, if prisoners are not allowed to wear their own clothing, they shall be provided with suitable clothing for the climate that is adequate to maintain good health.<sup>69</sup> The SMR mandates that clothing cannot be degrading or humiliating, but it does not provide guidance or examples regarding what may constitute “degrading” or “humiliating.”<sup>70</sup> An example of what is likely to violate this rule is the requirement of Arizona Sheriff Joe Arpaio that inmates in his facility wear pink underwear; a requirement that was found, when applied to an inmate in need of psychiatric treatment, to be deliberate indifference to the inmate’s serious medical needs.<sup>71</sup> In addition, there must be facilities for regularly keeping clothing

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66. Convention against Torture, *supra* note 42, art. 13.

67. Universal Declaration of Human Rights, *supra* note 37, art. 25.

68. *Id.*

69. Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, E.S.C. Res. 663C, Annex I, at rule 17(1), U.N. ESCOR, 24th Sess., Supp. No. 1, U.N. Doc. A/CONF/611 (July 31, 1957), amended by E.S.C. Res. 2076, at 35, U.N. ESCOR, 32nd Sess., Supp. No. 1, U.N. Doc. E/5988 (May 13, 1977), *available at* [http://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf) [hereinafter Standard Minimum Rules].

70. *Id.*

71. *Wagner v. County of Maricopa*, 747 F.3d 1048, 1053(9th Cir. 2012).

clean.<sup>72</sup>

Prisoner accommodations, especially sleeping areas, must meet “all requirements of health,” meaning the conditions cannot be harmful to the prisoner’s health.<sup>73</sup> In particular, prisoners must be given adequate air space, floor space, lighting, heating, and ventilation.<sup>74</sup> Furthermore, all prisoners shall be provided with his or her own bed, as well as clean and sufficient bedding, with facilities for keeping the bedding clean.<sup>75</sup>

These rules all have important implications for preventing prison overcrowding. Prison overcrowding endangers the basic rights, including the right to an adequate standard of living and the right to humane standards of physical and mental health.<sup>76</sup> Despite language that “guarantees” prisoners the right to an adequate standard of living, prisons all over the world consistently, and egregiously, breach these rules.

### C. Health and Healthcare Rights of Prisoners

The U.N. Committee on Economic, Social and Cultural Rights declares the right to health extends beyond both timely and appropriate health care. The Committee asserts it includes safe food, water, working conditions and an overall healthy environment.<sup>77</sup>

In accordance with this minimum standard, the U.N. Standard Minimum Rules for Treatment of Prisoners and the other conventions set forth a number of measures to protect prisoners’ physical and mental health. These standards are laid out below.

#### i. General Medical Services for Prisoners

Principle 9 of the Basic Principles for the Treatment of Prisoners verifies that prisoners are entitled to access the same

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72. Standard Minimum Rules, *supra* note 69, rules 17(2) & 18.

73. *Id.* rule 10 (“All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”).

74. *Id.*

75. *Id.* rule 19.

76. *See* Chung, *supra* note 40, at 2376, 2396-2400.

77. United Nations, Econ. & Soc. Council, Comm. On Econ., Soc., and Cultural Rights, 22nd, 23rd, and 24th Sess., p. 129, U.N. Doc. E/C.12/2000/21, Supp. No. 2 (2001).

health services generally available in that country without discrimination due to their incarcerated status.<sup>78</sup> According to the 1982 Principles of Medical Ethics, medical personnel have a duty to provide an equivalent quality of healthcare to those who are imprisoned as those who are not.<sup>79</sup>

According to the Principles on Detention or Imprisonment, all prisoners should undergo a medical examination as soon as possible after they are admitted into prison to scan for any physical or mental illnesses.<sup>80</sup> The examination and any necessary medical treatment must be provided for free.<sup>81</sup> Prisoners who require specialist treatment must be transferred to specialized institutions or to hospitals, unless hospital facilities are provided in the institution.<sup>82</sup>

The SMR states that all decisions about a prisoner's health should only be made on medical grounds – without regard to a person's incarcerated status -- and should only be made by medically qualified personnel.<sup>83</sup> Prisoners have the right to request a second medical opinion.<sup>84</sup> Furthermore, prisoners have

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78. Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, ¶ 9, U.N. Doc. A/RES/45/111 (Dec. 14, 1990) (“Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.”).

79. G.A. Res. 37/194, ¶ 1, U.N. Doc. A/RES/37/194 (Dec. 18, 1982) (“Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.”).

80. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, Prin. 24, U.N. Doc. A/RES/43/173 (Dec. 9, 1988) [hereinafter Principles on Detention and Imprisonment] (“A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”); Standard Minimum Rules, *supra* note 69, rule 24 (“The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.”).

81. Principles on Detention or Imprisonment, *supra* note 80, prin. 24.

82. Standard Minimum Rules, *supra* note 69, rule 22(2).

83. *Id.* rule 25.

84. Principles on Detention or Imprisonment, *supra* note 80, prin. 25.

the right to access a qualified dentist.<sup>85</sup> Prison staff must ensure the full protection of the health of prisoners in their custody and, in particular, must take immediate action to ensure medical attention where required.<sup>86</sup> This means that all requests by prisoners to see a doctor must be taken seriously and promptly responded to.

At every prison, there must be at least one available, qualified medical officer who also has some knowledge of psychiatry.<sup>87</sup> The medical officer's duties include: (1) seeing and examining every prisoner as soon as possible after his admission and thereafter as necessary;<sup>88</sup> (2) to care for the physical and mental health of the prisoners—including seeing daily all sick prisoners, all prisoners who complain of illness, and any prisoner to whom his attention is specially directed;<sup>89</sup> (3) to report to the director of the facility if he believes that “a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment;”<sup>90</sup> and (4) to regularly inspect and advise the director of the prison on health issues such as food, hygiene, sanitation, living conditions and exercise available at the institution.<sup>91</sup>

## ii. Psychiatric Services for Prisoners Suffering From Mental Health Disorders

The U.S. Department of Justice estimates that 56 percent of state prisoners, 45 percent of federal prisoners and 64 percent of local jail inmates have mental health disorders.<sup>92</sup>

85. Standard Minimum Rules, *supra* note 69, rule 22(3).

86. G.A. Res. 34/169, art. 6, U.N. Doc. A/RES/169 (Dec. 9, 1988).

87. Standard Minimum Rules, *supra* note 69, rule 22(1) (“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.”).

88. Standard Minimum Rules, *supra* note 69, rule 24.

89. *Id.* rule 25(1).

90. Standard Minimum Rules, *supra* note 69, rule 25(2).

91. *Id.* rule 26.

92. Doris J. James & Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates*, U.S. Dep't of Justice: Bureau of Justice Statistics (Sept. 2006), available at <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>; see also, *Mental Illness, Human Rights and Prisons: Human Rights Watch Statement for the Record to the Senate Judiciary Committee* (Sept. 22, 2009), [http://www.hrw.org/news/2009/09/22/mental-illness-human-rights-and-us-prisons#\\_ftn2](http://www.hrw.org/news/2009/09/22/mental-illness-human-rights-and-us-prisons#_ftn2).

Human rights considerations demand that services for psychiatric diagnosis and treatment be available at every prison.<sup>93</sup> If a prisoner is determined to be insane, he or she must not remain in prison, but shall be transferred as soon as possible to a mental institution.<sup>94</sup> Prisoners suffering from other mental health disorders must be treated in specialized institutions under medical management.<sup>95</sup>

While incarcerated, prisoners suffering from mental health disorders must be supervised by a medical officer.<sup>96</sup> Furthermore, steps should be taken to ensure, if necessary, the continuation of psychiatric treatment after the release of the prisoner.<sup>97</sup>

#### D. The Rehabilitation and Social Reformation of Prisoners

The main human rights goal of prison authorities in their treatment of prisoners should be to encourage personal reformation and social rehabilitation.<sup>98</sup> Therefore, prisons should be centered around the goal of helping prisoners “lead law-abiding and self-supporting lives after their release.”<sup>99</sup> Work, education, vocational training, religious training, and contact with the outside world are all essential ways to meet this goal of rehabilitation of prisoners.<sup>100</sup>

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93. Standard Minimum Rules, *supra* note 69, rule 22(1). For a discussion on how U.S. courts are reluctant to embrace international human rights law analysis for mentally ill prisoners, see Kim P. Turner, *Raising the Bars: A Comparative Look at Treatment Standards for Mentally Ill Prisoners in the United States, United Kingdom, and Australia*, 16 CARDOZO J. INT’L & COMP. L. 409, 442-444 (2008).

94. Standard Minimum Rules, *supra* note 69, rule 82(1).

95. *Id.* rule 82(2).

96. *Id.* rule 82(3).

97. *Id.* rule 83.

98. International Covenant on Civil and Political Rights, *supra* note 38, art. 10(3) (“The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”).

99. Standard Minimum Rules, *supra* note 69, rules 65 & 66(1).

100. *Id.* rule 66(1) (“To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counseling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.”).

### i. Work

As part of such rehabilitation, prisoners who are medically fit are required to work.<sup>101</sup> The work they are given should provide them with skills that will help them find a job upon their release from prison and allow them to contribute to their own financial support and that of their families, thereby facilitating their transition back into society.<sup>102</sup> Prisons should provide vocational training, particularly for young prisoners.<sup>103</sup>

Prisoners should be paid for their work.<sup>104</sup> With regard to their wages, prisoners should be allowed to spend part, send part home, and save part.<sup>105</sup> Furthermore, national legislation governing health and safety at work applies equally in prison as it does in the community.<sup>106</sup>

### ii. Education

All prisoners have the right to education while incarcerated, as well as the right to take part in cultural activities; both of these are aimed at the full development of the human personality.<sup>107</sup> This right is derived from the universal, basic human right to education for all people. Article 26 of the UDHR provides that “everyone has the right to education.”<sup>108</sup>

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101. Standard Minimum Rules, *supra* note 69, rules 66(1) & 71; Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, ¶8, U.N. Doc. A/RES/45/111 (Dec. 14, 1990).

102. Standard Minimum Rules, *supra* note 69, rules 66(1) & 71; Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, ¶ 8, U.N. Doc. A/RES/45/111 (Dec. 14, 1990).

103. Standard Minimum Rules, *supra* note 69, at rule 71(5).

104. Universal Declaration of Human Rights, *supra* note 37, art. 23; Standard Minimum Rights, *supra* note 69, at rule 73(1); *see also* William P. Quigley, *Prison Work, Wages, and Catholic Social Thought: Justice Demands Decent Work for Decent Wages, Even for Prisoners*, 44 SANTA CLARA L. REV. 1159 (2004).

105. Standard Minimum Rules, *supra* note 69, rule 76(2)-(3).

106. *Id.* rules 72(1) & 74.

107. Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, ¶ 6, U.N. Doc. A/RES/45/111 (Dec. 14, 1990) (“All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.”).

108. Standard Minimum Rules, *supra* note 69, rule 26; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. Doc. No. 14531, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) (Likewise, article 13 of ICESCR, which the U.S. has not ratified, acknowledges that the right to education belongs to “everyone,” and that such a right serves to strengthen one’s sense of human dignity, to develop one’s potential to the fullest, and to promote societal harmony and tolerance. Further, the ICESCR declares “The

In light of this universal right, prisons must provide and encourage education and cultural activities.<sup>109</sup> Education is compulsory for young and illiterate prisoners, and “so far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.”<sup>110</sup> Finally, all prisoners must have access to an adequate library.<sup>111</sup>

### iii. Religion

Because freedom of religious belief is a basic human right, all prisoners shall have the right to observe their own religions and to have access to ministers of those religions.<sup>112</sup> Furthermore, prisoners must be allowed access to qualified representatives of any religion.<sup>113</sup>

### iv. Contact With the Outside World

“General human rights to interaction and communication are not abrogated by the fact of imprisonment.”<sup>114</sup> To the contrary, contact with the outside world is generally considered to be an essential part of a prisoner’s reintegration into society.<sup>115</sup>

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States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”)

109. Universal Declaration of Human Rights, *supra* note 37, arts. 26 & 27; Standard Minimum Rules, *supra* note 69, rules 40, 77-78.

110. Standard Minimum Rules, *supra* note 69, rule 77.

111. Standard Minimum Rules, *supra* note 69, rule 40 (“Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.”).

112. Universal Declaration of Human Rights, *supra* note 37, art. 18; International Covenant on Civil & Political Rights, *supra* note 38, at art. 18(1).

113. Standard Minimum Rules, *supra* note 69, rule 41.

114. *Making Standards Work*, PENAL REFORM INT’L 101 (1995), <http://www.penalreform.org/wp-content/uploads/2013/05/man-2001-making-standards-work-en.pdf>.

115. *Id.* See also Standard Minimum Rules, *supra* note 69, rule 61 (“The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it.”).

However, by the very nature of being imprisoned, there must necessarily be some limitations on these general rights.<sup>116</sup> Principle 5 of the Basic Principles for the Treatment of Prisoners spells out this balance:

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.<sup>117</sup>

Under this framework, all prisoners do have the right to communicate with the outside world, especially their families, at regular intervals—through both correspondence and visitation.<sup>118</sup> As the Standard Minimum Rules provide:

From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.<sup>119</sup>

If a prisoner requests to be imprisoned near his home, this should be honored if possible.<sup>120</sup> Furthermore, all prisoners must be provided with adequate opportunity to communicate and/or visit with a lawyer in a timely manner, in full confidentiality, and

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116. *Making Standards Work*, PENAL REFORM INT'L 101 (1995), <http://www.penalreform.org/wp-content/uploads/2013/05/man-2001-making-standards-work-en.pdf>.

117. Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, ¶ 5, U.N. Doc. A/RES/45/111 (Dec. 14, 1990).

118. Standard Minimum Rules, *supra* note 69, rules 37 & 79; *see also* Principles on Detention or Imprisonment, *supra* note 80, prin. 19 (“A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”).

119. Standard Minimum Rules, *supra* note 69, rule 69.

120. Principles on Detention or Imprisonment, *supra* note 80, prin. 20.

without censorship.<sup>121</sup> Additionally, foreign prisoners shall be allowed to communicate with their diplomatic and consular representatives.<sup>122</sup> Prisoners are entitled to stay informed about all important news items.<sup>123</sup>

### E. Complaints, Inspections, and other Procedures

Any prisoner whose rights and freedoms have been violated has the right to a remedy which shall be determined by a competent court or other authority.<sup>124</sup> Prisoners have the right to make complaints regarding their treatment and to have such complaints dealt with promptly and confidentially.<sup>125</sup> If a prisoner files a complaint and it is rejected or not responded to in a timely manner, he can bring it before a judge or other authority.<sup>126</sup> Prisons must provide to all prisoners information regarding prison regulations, the complaint system, and the disciplinary procedures when they enter the prison.<sup>127</sup>

With regard to allegations of torture, States must guarantee a prompt and impartial investigation whenever there are reasonable grounds to believe an act of torture or other mistreatment has been committed.<sup>128</sup>

Prisons must be inspected on a regular basis by qualified inspectors appointed by a competent authority that is separate

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121. Principles on Detention or Imprisonment, *supra* note 80, prin. 18; *see also* Basic Principles on the Role of Lawyers, 8th U.N. Cong. on the Prevention of Crime and the Treatment of Offenders, principle 8 (Aug. 27 – Sep. 7, 1990) (“All arrested, detained or imprisoned persons shall be provided, with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”).

122. Standard Minimum Rules, *supra* note 69, rule 38.

123. *Id.* rule 39.

124. International Covenant on Civil and Political Rights, *supra* note 38, art. 2; *see also* Convention against Torture, *supra* note 42, art. 13; *see also* Principles on Detention or Imprisonment, *supra* note 80, prin. 33.

125. Principles on Detention or Imprisonment, *supra* note 80, prin. 33; Standard Minimum Rules, *supra* note 69, rule 36.

126. Principles on Detention or Imprisonment, *supra* note 80, prin. 33, ¶ 4.

127. Standard Minimum Rules, *supra* note 69, rule 35.

128. Convention against Torture, *supra* note 42, art. 12; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 55/89, U.N. Doc. A/RES/55/89, ¶ 2 (Dec. 4, 2000).

from the prison administration.<sup>129</sup> Every prisoner has the right to communicate openly and confidentially with the inspectors outside the presence of prison staff.<sup>130</sup>

## F. Rules Governing Special Groups of Prisoners

### i. Juveniles in Prison

“Children are to benefit from all the human rights guarantees available to adults.”<sup>131</sup> Thus, when children are detained or imprisoned, they are entitled to the same rights as adults as well as additional care and protection applicable only to juveniles, as detailed below.<sup>132</sup>

Children who are incarcerated must never be subjected to corporeal punishment, solitary confinement, capital punishment, or life imprisonment without possibility of release.<sup>133</sup> In all cases involving juveniles, detention or imprisonment should always be treated as a last resort and for the shortest period necessary.<sup>134</sup> Alternatives to imprisonment should be used wherever possible.<sup>135</sup>

129. Principles on Detention or Imprisonment, *supra* note 80, prin. 29, ¶ 1; Standard Minimum Rules, *supra* note 69, rule 55.

130. Standard Minimum Rules, *supra* note 69, rule 36(2) & 55; Principles on Detention or Imprisonment, *supra* note 80, prin. 29, ¶ 2.

131. U.N. HIGH COMM’N FOR HUM. RTS., HUM. RTS. & PRISONS: A POCKETBOOK OF INT’L HUM. RTS. STNDS. FOR PRISON OFFICIALS, U.N. Sales No. E.04.XIV.5 (2005); Universal Declaration of Human Rights, *supra* note 37, arts. 1 & 25, ¶ 2; Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 Preamble, ¶ 1 (Sept. 2, 1990) [hereinafter Convention on Children’s Rights] (Children are defined as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”); International Covenant on Civil & Political Rights, *supra* note 38, preamble.

132. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), G.A. Res 40/33, U.N. Doc. A/RES/40/33 (Nov. 29, 1985) [hereinafter Beijing Rules]; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, G.A. Res 45/113, U.N. Doc. A/RES/45/113 (Dec. 14, 1990) [hereinafter Rules for Juveniles]; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. Res 45/112, U.N. Doc. A/RES/45/112 (Dec. 14, 1990); Guidelines for Action on Children in the Criminal Justice System, Economic and Social Council Res. 1997/30 (July 21, 1997).

133. Convention on Children’s Rights, *supra* note 131, art. 37(a); Beijing Rules, *supra* note 132; Rules for Juveniles, *supra* note 132, ¶ 64, 66, 67.

134. *See generally, The Issue*, PENAL REFORM INTERNATIONAL, <http://www.penalreform.org/priorities/justice-for-children/issue/> (last visited Mar. 9, 2015); Convention on Children’s Rights, *supra* note 130, art. 37(b).

135. *Id.*

The purpose of detention for juveniles should always be rehabilitation rather than punishment.<sup>136</sup> When detained, children must be treated in a manner which promotes their sense of dignity and worth, reflects their best interests, takes their age and specific needs into account, and ultimately facilitates their reintegration into society.<sup>137</sup> Thus, children in custody should receive care, protection and all necessary medical and physical assistance.<sup>138</sup> Incarcerated juveniles have the right to education and vocational training.<sup>139</sup> Prisons must make special efforts to allow detained children to receive visits from and communicate with family members.<sup>140</sup>

Furthermore, children must always be detained separately from adults and be brought to trial as quickly as possible.<sup>141</sup> Parents must be notified of the admission, transfer, release, sickness, injury, or death of a juvenile.<sup>142</sup>

Any disciplinary procedures involving a child shall respect the child's dignity and be designed to instill in the child "a sense of justice, self-respect, and respect for the basic rights of every person."<sup>143</sup> Weapons are prohibited in institutions housing juveniles.<sup>144</sup>

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136. See generally, *The Issue*, PENAL REFORM INTERNATIONAL, <http://www.penalreform.org/priorities/justice-for-children/issue/> (last visited Mar. 9, 2015); Convention on Children's Rights, *supra* note 130, art. 37(b).

137. Convention on Children's Rights, *supra* note 131, arts. 3 & 37; Beijing Rules, *supra* note 132, rules 1, 5, & 6; Rules for Juveniles, *supra* note 132, rules 1, 4, 14, 31, 79, & 80.

138. *Id.*

139. Rules for Juveniles, *supra* note 132, rules 38 & 42.

140. Convention on Children's Rights, *supra* note 131, art. 9, 10, 37(c); Beijing Rules, *supra* note 132, rules 13.3, 26.5, 27.2; Standard Minimum Rules, *supra* note 69, rule 37; Rules for Juveniles, *supra* note 132, rule 59.

141. *Id.*

142. Convention on Children's Rights, *supra* note 131, art. 37(c) & 40, ¶ 2(b)(ii); Beijing Rules, *supra* note 132, rules 10.1 & 26.5; Standard Minimum Rules, *supra* note 69, rules 37 & 44; Rules for Juveniles, *supra* note 132, rules 56 & 57.

143. Rules for Juveniles, *supra* note 132, rule 66.

144. *Id.* at rule 65.

## ii. Women in Prisons

Women are entitled to the equal protection of all human rights as men.<sup>145</sup> Women who are incarcerated shall not be discriminated against and shall be protected from all forms of violence or exploitation.<sup>146</sup> As such, female prisoners must be housed separately from male prisoners.<sup>147</sup> To the extent possible, men and women should be kept in separate institutions, but if this is not possible, then the section of a prison for women must be kept completely separate from the men.<sup>148</sup> Furthermore, under international human rights law, there is an absolute prohibition on cross-gender supervision—women prisoners are only to be supervised and searched by female officers and staff.<sup>149</sup>

## IV. HOW U.N. PRISONER HUMAN RIGHTS ADVOCACY OPERATES

The main way prisoners can file individual human rights communications is directly with the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>150</sup> The United Nations Office of the High Commissioner for Human Rights has appointed 38 independent

145. Universal Declaration of Human Rights, *supra* note 37, art. 2; International Covenant on Civil & Political Rights, *supra* note 38, art. 3; Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), G.A. Res. 34/180, art. 1-3, U.N. Doc. A/34/46 (Dec. 18, 1979); Declaration on the Elimination of Violence against Women, art. 3 G.A. Res. 48/104, U.N. Doc. A/RES/48/04 (Dec. 20, 1993). Unfortunately CEDAW has not been ratified by the US so its use in prisoner advocacy is lessened. For an excellent overview of this, see Jenni Gainsborough, *Women in Prison: International Problems and Human Rights Based Approaches to Reform*, 14 WM. & MARY J. WOMEN L. 271 (2007).

146. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), G.A. Res. 34/180, arts. 1, 6, & 7, U.N. Doc. A/34/46 (Dec. 18, 1979); Declaration on the Elimination of Violence against Women, arts. 2 & 4, G.A. Res. 48/104, U.N. Doc. A/RES/48/04 (Dec. 20, 1993); *see also* Robin Levi, Nerissa Kunakemakorn, Azadeh Zohrabi, Elizaveta Afanasieff, & Nicole Edwards-Masuda, *Creating the "Bad Mother": How the U.S. Approach to Pregnancy in Prisons Violates the Right to Be a Mother*, 18 UCLA WOMEN'S L.J. 1, 63-74 (2010) (discusses international human rights law and how it can be helpful for pregnant women prisoners).

147. Standard Minimum Rules, *supra* note 69, rule 8(a).

148. *Id.*

149. Standard Minimum Rules, *supra* note 69, rule 53.

150. *See Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Introduction*, UNITED NATIONS HUMAN RIGHTS: OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx> (last visited Mar. 11, 2015).

human rights experts to report on specific themes of human rights.<sup>151</sup> Each of these experts is called a Special Rapporteur. The main expert on prisoner human rights issues is the Special Rapporteur tasked with reviewing complaints on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>152</sup>

For group issues, not individual communications, the United Nations Human Rights Council accepts complaints and investigates “consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms....”<sup>153</sup> Advocacy groups can also use international human rights standards as benchmarks in reports showing how authorities are failing in their responsibilities towards prisoners. For example, the ACLU issued a comprehensive report detailing

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151. See *Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Introduction*, UNITED NATIONS HUMAN RIGHTS: OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx> (last visited Mar. 11, 2015); the 38 areas of human rights include: adequate housing; sale of children; cultural rights; people with disabilities; education; environment; extrajudicial, summary or arbitrary executions; extreme poverty; food; peaceful assembly; freedom of expression; freedom of religion; physical and mental health; human rights defenders; independence of judges and lawyers; indigenous peoples; internally displaced persons; mercenaries; migrants; minority issues; older persons; promotion of truth, justice, reparation and guarantees of non-recurrence; racism; slavery; international solidarity; terrorism; management of hazardous substances and wastes; trafficking of persons; transnational corporations and other businesses; water and sanitation; and women in law and practice. See information regarding each subject matter at *Thematic Mandates*, UNITED NATIONS HUMAN RIGHTS: OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx> (last visited Mar. 11, 2015).

152. See *Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Introduction*, UNITED NATIONS HUMAN RIGHTS: OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx> (last visited Mar. 11, 2015). Many nations are uncomfortable with the power of Special Rapporteurs to investigate and critique their human rights record and have launched various campaigns to rein them in. For a discussion of this by an exemplary former Special Rapporteur, see Philip Alston, *Hobbling the Monitors: Should U.N. Human Rights Monitors be Accountable?* 52 HARV. INT’L L.J. 561 (2011).

153. See *Human Rights Council Complaint Procedure*, UNITED NATIONS HUMAN RIGHTS: OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx> (last visited Mar. 11, 2015).

human rights abuses of immigrant detainees in the U.S. utilizing international standards.<sup>154</sup>

There is also the option of the Inter-American Human Rights system.<sup>155</sup> Opportunities for advocates to raise complaints also arise when the U.S. human rights record is up for review for compliance with individual treaties and during the regular Universal Periodic Review.<sup>156</sup> These types of human rights advocacy provide opportunities for public education, organizing and advocacy with persuasive power and authority, as the following examples demonstrate.<sup>157</sup>

### A. Prisoner Complaints to UN Special Rapporteur

The Special Rapporteur on Torture is directed to perform several human rights tasks.

The mandate of that office comprises three main activities: 1) transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, as well as communications on past alleged

154. Sunita Patel & Tom Jawetz, *Conditions of Confinement in Immigration Detention Facilities*, ACLU NAT'L PRISON PROJECT, [https://www.aclu.org/sites/default/files/pdfs/prison/unsr\\_briefing\\_materials.pdf](https://www.aclu.org/sites/default/files/pdfs/prison/unsr_briefing_materials.pdf) (last visited Mar. 11, 2015).

155. Caroline Bettinger-López, *The Inter-American Human Rights System: A Primer*, 42 CLEARINGHOUSE REV. 581 (2009).

156. See the section below on Shadow Reports. See also Eric Tars, *Who Knows What Lurks in the Hearts of Human Rights Violators? The Shadow (Reporter) Knows, Human Rights Shadow Reporting: A Strategic Tool for Domestic Justice*, 42 CLEARINGHOUSE REV. 475 (2009), available at [http://www.nlchp.org/Clearinghouse\\_Shadow\\_Reporting\\_2009-01](http://www.nlchp.org/Clearinghouse_Shadow_Reporting_2009-01).

157. Alvin J. Bronstein & Jenni Gainsborough, *Using International Human Rights Laws and Standards for U.S. Prison Reform*, 24 PACE L. REV. 811 (2004); Jenni Gainsborough, *Women in Prison: International Problems and Human Rights Based Approaches to Reform*, 14 WM. & MARY J. WOMEN & L. 271 (2007); Martin A. Geer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections Under Domestic Civil Rights Law – A Case Study of Women in United States Prisons*, 13 HARV. HUM. RTS. J. 71 (2000); Deborah Labelle, *Bringing Human Rights Home to the World of Detention*, 40 COLUM. HUM. RTS. L. REV. 79 (2008); Sara A. Rodriguez, *The Impotence of Being Earnest: Status of the United Nations Standard Minimum Rules for the Treatment of Prisoners in Europe and the United States*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 61 (2007); Gwynne Skinner, *Bringing International Law to Bear on the Detention of Refugees in the United States*, 16 WILLAMETTE J. INTL L. & DISP. RESOL. 270 (2008); Dirk van Zyl Smit, *Regulation of Prison Conditions*, 39 CRIME & JUST. 503, 549-53 (2010); Kim P. Turner, *Raising the Bars: A Comparative Look at Treatment Standards for Mentally Ill Prisoners in the United States, United Kingdom, and Australia*, 16 CARDOZO J. INT'L & COMP. L. 409, 442-44 (2008).

cases of torture; 2) undertaking fact-finding country visits; and 3) submitting annual reports on activities, the mandate and methods of work to the Human Rights Council and the General Assembly. Unlike the complaints mechanisms of the human rights treaty monitoring bodies, the Special Rapporteur does *not require the exhaustion of domestic remedies to act*. When the facts in question come within the scope of more than one mandate established by the Commission, the Special Rapporteur may decide to approach other thematic mechanisms and country rapporteurs with a view to sending joint communications or seeking joint missions.<sup>158</sup>

Though they offer important advocacy opportunities, there are limitations on the authority of Special Rapporteurs. They have no enforcement authority and limited resources. They cannot compel countries to comply with their recommendations. Rather, their value is in adding pressure and shining an international spotlight on domestic concerns, as well as offering an opportunity for community engagement and organizing.<sup>159</sup>

At the time this article was written, the Special Rapporteur on Torture was Mr. Juan Ernesto Mendez of Argentina.<sup>160</sup> The standards which are used by the Special Rapporteur to evaluate human rights complaints and conditions are undergoing change. In August 2013, the U.N. Special Rapporteur on Torture issued a comprehensive report which analyzed human rights protections for prisoners and described developments in the understanding of how these rights should be applied by focusing on pre-trial detention, conditions of detention, prisoner safety and prison

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158. See *Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Introduction*, UNITED NATIONS HUMAN RIGHTS: OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx> (last visited Mar. 11, 2015) (emphasis supplied).

159. Laura Smyth, *Country-Specific Mandate Holders: The Role of the Special Rapporteur on the Situation of Human Rights in Cambodia*, 15 MELB. J. INT'L L. 155, 158-62 (2014).

160. See Juan Mendez, *Special Rapporteur on Torture*, UNITED NATIONS HUMAN RIGHTS: OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/JuanMendez.aspx> (last visited Mar. 11, 2015).

violence, medical and mental health services, discipline and punishment, solitary confinement, vulnerable populations within prisons, access to legal representation, and independent oversight.<sup>161</sup>

## B. Examples of Prisoner Human Rights Complaints to U.N. Special Rapporteur on Torture

### i. Human Rights Challenge to Mistreatment of Detained Juveniles in Massachusetts

In 2010, the Special Rapporteur on Torture was asked to investigate use of electric shock and long term restraint used in the treatment of juveniles in a residential program in Canton Massachusetts.<sup>162</sup> The children were subjected to “aversion therapy” which included electric shocks and physical restraint. The appeal to the human rights monitor was a 57 page brief filed by Mental Disabilities Rights International, now Disability Rights International, documenting the treatment and abuses at the center.<sup>163</sup> The Rapporteur looked into this and asked the

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161. See the following report, which describes the importance of the Standard Minimum Rules for the Treatment of Prisoners and suggests updates, U.N. Secretary-General, *Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary -General*, U.N. Doc. A/68/295 (Aug. 9, 2013), available at [http://antitorture.org/wp-content/uploads/2013/09/SMR\\_Report\\_August\\_2013.pdf](http://antitorture.org/wp-content/uploads/2013/09/SMR_Report_August_2013.pdf).

162. This urgent appeal was filed to the United Nations Special Rapporteur on Torture by Mental Disability Rights International, now called Disability Rights International, or DRI. See Laurie Ahern & Eric Rosenthal, *Torture not Treatment: Electric Shock and Long-Term Restraint in the United States on Children and Adults with Disabilities at the Judge Rotenberg Center, Urgent Appeal to the United Nations Special Rapporteur on Torture*, MENTAL DISABILITY RTS. INT’L (2010), <http://www.disabilityrightsintl.org/wordpress/wp-content/uploads/USReportandUrgentAppeal.pdf>. The Special Rapporteur acknowledged receiving the complaint and initially asked the U.S. to respond. See Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Summary of information, including individual cases, transmitted to Governments and replies received*, case 234, U.N. Doc. A/HRC/16/52/Add.1 (Mar. 1, 2011) (by Juan E. Mendez). See Eric Rosenthal & Laurie Ahern, *When Treatment is Torture: Protecting People with Disabilities Detained in Institutions*, 19 HUM. RTS. BRIEF 2 (2012), available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1817&context=hrbrief>.

163. Laurie Ahern & Eric Rosenthal, *Torture not Treatment: Electric Shock and Long-Term Restraint in the United States on Children and Adults with Disabilities at the Judge Rotenberg Center, Urgent Appeal to the United Nations Special Rapporteur on Torture*, MENTAL DISABILITY RTS. INT’L (2010), available at <http://www.disabilityrightsintl.org/wordpress/wp-content/uploads/USReportandUrgentAppeal.pdf>.

U.S. government to investigate and respond.<sup>164</sup> The U.N. Rapporteur presented this situation as part of his report to the U.N. Human Rights Council in Geneva and concluded that the rights of the students “have been violated under the UN Convention against Torture and other international standards.”<sup>165</sup> The U.S. responded that when this was brought to their attention, new regulations were put in place to prevent this type of therapy.<sup>166</sup>

## ii. Human Rights Challenges to California Solitary Confinement

In March 2012, twenty California prisoners and fifteen organizations filed a complaint with the U.N. Special Rapporteur on Torture on behalf of 4,000 prisoners being held in isolated segregation.<sup>167</sup> Their communication told over twenty individual stories of people being held in isolation, most for many years, one for seventeen years.<sup>168</sup> Their complaint was also filed with the United Nations Working Group on Arbitrary Detention.<sup>169</sup>

164. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Summary of information, including individual cases, transmitted to Governments and replies received*, case 234, U.N. Doc. A/HRC/16/52/Add.1 (Mar. 1, 2011) (by Juan E. Mendez).

165. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Observations on communications transmitted to Governments and replies received*, case United States of America, p. 83-84, U.N. Doc. A/HRC/22/53/Add.4 (March 4, 2013) (by Juan E. Mendez).

166. *Id.* case United States of America, p. 84-85.

167. Peter A. Schey & Carlos R. Holguin, *Urgent Petition to United Nations Juan E. Mendez UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW (2012), available at <http://www.centerforhumanrights.org/PDFs/Final%20Public%20UN%20Petition%20to%20Special%20Rapporteur%20on%20Torture.pdf> (last visited Mar. 11, 2015).

168. Peter A. Schey & Carlos R. Holguin, *Urgent Petition to United Nations Juan E. Mendez UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW (2012), ¶ 18, available at <http://www.centerforhumanrights.org/PDFs/Final%20Public%20UN%20Petition%20to%20Special%20Rapporteur%20on%20Torture.pdf> (last visited Mar. 11, 2015).

169. Peter A. Schey & Carlos R. Holguin, *Urgent Petition to United Nations Working Group on Arbitrary Detention, Human Rights Council, United Nations General Assembly*, CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW (2012), available at <http://www.centerforhumanrights.org/PDFs/Fin.%20PUBLIC%20UN%20Petition%20Committee%20on%20Arbit%20Detention.pdf>.

Amnesty International joined in and issued a report finding that California's use of solitary confinement violates international human rights laws.<sup>170</sup>

In May 2012, a federal lawsuit was filed challenging the use of prolonged solitary confinement on behalf of prisoners, some of whom had been in solitary confinement for 28 years.<sup>171</sup> On July 8, 2013, thousands of California prisoners, including many of the people who filed the international human rights complaint, began a peaceful hunger strike to protest solitary confinement.<sup>172</sup> On August 16, 2013, over 300 prisoners in solitary confinement in California asked the U.N. Special Rapporteur to visit the prison and to meet with them and help resolve the human rights violations.<sup>173</sup>

The U.N. Special Rapporteur on Torture, Juan E. Mendez, issued a public statement in August 23, 2013 in which he urged the U.S. government to abolish the use of prolonged or indefinite solitary confinement.<sup>174</sup> The Special Rapporteur observed that there are about 80,000 prisoners in the U.S. who are subject to solitary confinement, nearly 12,000 of which are in California. He went on to ask for an absolute ban on solitary confinement of juveniles, people with psychosocial disabilities or other disabilities and health conditions, pregnant and breastfeeding women and those serving life sentences or those on death row.<sup>175</sup>

170. *USA: The Edge of Endurance, Prison Conditions in California's Security Housing Units*, AMNESTY INT'L (2012), <http://www.amnesty.org/en/library/asset/AMR51/060/2012/en/3af9a573-df33-4d9b-bfdb-5ef393df2b24/amr510602012en.pdf>.

171. *See* Second Amended Complaint, *Ruiz v. Brown*, No. 4:09-cv-05796-CW, (N.D. Cal. 1990), *available at* <http://ccrjustice.org/files/Ruiz-Amended-Complaint-May-31-2012.pdf>.

172. Ian Lovett, *Inmates End Hunger Strike in California*, N.Y. Times (Sept. 5, 2013), <http://www.nytimes.com/2013/09/06/us/inmates-end-hunger-strike-in-california.html>.

173. *UN Torture Rapporteur Juan Mendez Visits Hunger Strike Families*, PRISONER HUNGER STRIKE SOLIDARITY COALITION (Oct. 22, 2013), <https://www.popularresistance.org/un-torture-rapporteur-juan-mendez-visits-hunger-strike-families>.

174. California Jails: "*Solitary Confinement Can Amount to Cruel Punishment, Even Torture*" – *UN rights expert*, UNITED NATIONS, OFFICE OF HIGH COMMISSIONER FOR HUMAN RIGHTS (Aug. 23, 2013), *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13655&LangID=E>.

175. *Id.*

In its 2014 review of U.S. compliance with the Convention Against Torture, the U.N. Committee on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment issued conclusions and recommendations noting concern with the extensive use of solitary confinement and other forms of isolation in U.S. prisons and jails.<sup>176</sup> The Special Rapporteur visited the California Pelican Bay prison in December 2014.

### iii. Human Rights Challenges to Guantanamo

A number of human rights complaints were filed on behalf of Guantanamo prisoners, often as supplements to federal litigation or when federal litigation proved less than receptive. Five people confined at Guantanamo who were not U.S. citizens challenged the use of waterboarding, sexual humiliation, short shackling and the deployment of dogs in interrogation sessions calling them torture.<sup>177</sup> Another prisoner of Guantanamo, held for over twelve years without charge, challenged torture, degrading and inhuman treatment at several U.S. bases in Afghanistan and Guantanamo.<sup>178</sup> Others from Algeria asked that they not be repatriated to Algeria out of fear of torture there.<sup>179</sup>

The Special Rapporteur has tried repeatedly to visit the U.S. Guantanamo prison but has not been permitted free access

176. Committee against Torture, *Concluding observations on the third to fifth periodic reports of the United States of America*, ¶ 20, 1264th and 1267th Sess., Nov. 12-13, 2014, and adopted at 1276th and 1277th Sess., Nov. 20, 2014, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014), available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuLMMIdNURtE47fFHU%2bcDW3YqC%2f3zHkM7HdrMe8Ha0T3LrxFZw2DBuPPjJtmrR1GUBC%2fjzvD8gcT%2fCPPgMygXRPgJD4yWY90dyGDoPyZiQO4>.

177. See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Observations on communications transmitted to Governments and replies received, addendum*, ¶ 154, U.N. Doc. A/HRC/22/53.Add.4 (March 12, 2013) (by Juan E. Mendez).

178. See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Observations on communications transmitted to Governments and replies received, addendum*, ¶ 155, U.N. Doc. A/HRC/22/53.Add.4 (March 12, 2013) (by Juan E. Mendez).

179. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Summary of information, including individual cases, transmitted to governments and replies received, addendum*, cases 235 & 236, U.N. Doc. A/HRC/16/52/Add. 1 (March 1, 2011) (Juan E. Mendez).

to the prisoners.<sup>180</sup> The U.N. Committee on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment noted its deep concern about Guantanamo issues and found them to be a CAT violation in its review of the human rights record of the U.S. in November 2014.<sup>181</sup>

#### iv. Other Prisoner Human Rights Challenges Reviewed by U.N. Special Rapporteur

The Special Rapporteur looks at complaints by individuals whose human rights are being violated and reviews more systematic abuses of detained people. In 2009, the Special Rapporteur investigated widespread reports of pregnant women in U.S. jails and prisons being restrained by their ankles and wrists when being transported to the hospital and undergoing childbirth, despite the presence of armed guards.<sup>182</sup>

In 2010, the Special Rapporteur received information and asked the U.S. to report back on a mentally ill juvenile in Montana, who was imprisoned since he was fifteen and transferred to an adult facility that kept him in solitary for over a year.<sup>183</sup> Also in 2010, a number of organizations filed a human

180. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Observations on communications transmitted to Governments and replies received, addendum*, ¶ 154, U.N. Doc. A/HRC/22/53/Add.4 (March 12, 2013) (Juan E. Mendez).

181. Committee against Torture, *Concluding observations on the third to fifth periodic reports of the United States of America*, ¶ 20, 1264th and 1267th Sess., Nov. 12-13, 2014, and adopted at 1276th and 1277th Sess., Nov. 20, 2014, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014), available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuLMmIdNURtE47fFHU%2bcDW3YqC%2f3zHkM7HdrMe8Ha0T3LrxFZw2DBuPPjJtmrR1GUBC%2fjzvD8gcT%2fCPPgMygXRPgJD4yWY90dyGDoPyZiQO4>.

182. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Summary of information, including individual cases, transmitted to Governments and replies received, addendum*, case 275, U.N. Doc. A/HRC/13/39/Add. 1 (February 25, 2010) (Manfred Nowak).

The ACLU reported that in 2012 a federal court in Illinois approved a \$4.1 million dollar settlement for women and girls who had undergone this mistreatment. See Amy Fetting, *\$4.1 Million Settlement Puts Jails on Notice: Shackling Pregnant Women is Unlawful*, ACLU: BLOG OF RIGHTS (May 24, 2012), available at <https://www.aclu.org/blog/content/41-million-settlement-puts-jails-notice-shackling-pregnant-women-unlawful>.

183. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Summary of information, including individual cases, transmitted to governments and replies received, addendum*, case 233, U.N. Doc. A/HRC/16/52/Add. 1 (March 1, 2011) (Juan E. Mendez) (One of the allegations is

rights complaint on behalf of Steve Richardson, a resident of Los Angeles' Skid Row and an active human rights advocate for people there, indicating that he had been specifically and unfairly targeted and incarcerated by the Los Angeles Police Department because he was a human rights advocate.<sup>184</sup> Mr. Richardson was an activist in Los Angeles who had been working to promote and defend human rights in the Skid Row community.

In 2011, the Special Rapporteur challenged the U.S. government in the case of Bradley Manning, investigating prolonged solitary confinement.<sup>185</sup> In 2011, the Special Rapporteur challenged the eleven month solitary confinement of Bradley Manning by U.S. military authorities following his arrest in May 2010.<sup>186</sup> The Special Rapporteur reported on complaints and its investigation of the torture of hundreds of detainees in Iraq at Abu Ghraib and other places of detention.<sup>187</sup> Also in 2011, a human rights complaint was lodged with the Special Rapporteur by the National Immigrant Justice Center challenging sexual abuse, solitary confinement, and withholding

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that the juvenile "receives minimal water and is only allowed to eat NutraLoaf, a food substitute comprised of different ingredients mixed together.")

184. Letter from Becky Dennison, Co-Director, Los Angeles Community Action Network, to Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders (Nov. 23, 2010), *available at*

[www.nesri.org/sites/default/files/richardson\\_urgentappeal\\_0.pdf](http://www.nesri.org/sites/default/files/richardson_urgentappeal_0.pdf). The aforementioned Urgent Appeal was filed with the Rapporteur for Human Rights Defenders, challenging the police abuse and harassment of Mr. Richardson by Los Angeles Community Action Network, the National and Economic Social Rights Initiative, and a coalition of groups. This complaint addressed some criminal justice issues but was directed not to the Special Rapporteur on Torture but to the Special Rapporteur on Human Rights Defenders. For more about this, see Cynthia Soohoo & Diana Hortsch, *Who is a Human Rights Defender? An Essay on Sexual and Reproductive Rights Defenders*, 65 U. MIAMI L. REV. 981, 982-983 (2011).

185. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Observations on communications transmitted to Governments and replies received, addendum*, ¶ 170, U.N. Doc. A/HRC/19/61/Add.4 (Feb. 29, 2012) (Juan Mendez).

186. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Observations on communications transmitted to Governments and replies received, addendum*, ¶ 170, U.N. Doc. A/HRC/19/61/Add.4 (Feb. 29, 2012) (Juan Mendez).

187. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Summary of information, including individual cases, transmitted to governments and replies received, addendum*, case 238, U.N. Doc. A/HRC/16/52/Add. 1 (March 1, 2011) (Juan E. Mendez).

of medication for HIV and hormone therapy.<sup>188</sup> The Special Rapporteur challenged U.S. ill treatment and torture in immigration facilities against sixteen gay and transgender detainees kept and poorly treated in solitary confinement.<sup>189</sup>

In 2012, a human rights complaint was filed on behalf of Russell Maroon Shoats, a Pennsylvania prisoner who had spent twenty one years in solitary confinement.<sup>190</sup> The Special Rapporteur asked the U.S. to address the human rights complaints of solitary confinement of Robert Cuff who was being held in Shreveport Louisiana.<sup>191</sup> The Special Rapporteur also asked the U.S. to investigate and report on the detention of Daniel Chong by the Drug Enforcement Administration who was arrested for smoking marijuana and then left handcuffed in a five foot by ten foot cell for five days without food, water or restroom facilities.<sup>192</sup>

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188. *LGBT Clients Who Reported Gross Mistreatment in Immigration Custody Remain Detained*, (May 7, 2011), [www.immigrantjustice.org/staff/blog/lgbt-clients-who-reported-gross-mistreatment-immigration-custody-remain-detained](http://www.immigrantjustice.org/staff/blog/lgbt-clients-who-reported-gross-mistreatment-immigration-custody-remain-detained). The complaint is available at Letter from National Immigrant Justice Center to Officer Margo Schlanger, Dep't of Homeland Security (April 13, 2011), available at [http://www.immigrantjustice.org/sites/immigrantjustice.org/files/OCRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED\\_0.pdf](http://www.immigrantjustice.org/sites/immigrantjustice.org/files/OCRCL%20Global%20Complaint%20Letter%20April%202011%20FINAL%20REDACTED_0.pdf).

189. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Observations on communications transmitted to Governments and replies received, addendum*, ¶ 172, U.N. Doc. A/HRC/19/61/Add.4 (Feb. 29, 2012) (Juan Mendez).

190. The complaint, filed by family members and a coalition of human rights groups, is available at <http://russellmaroonshoats.wordpress.com/2012/07/16/complaint-to-un-special-rapporteur-international-campaign-to-free-russell-maroon-shoats-from-two-decades-solitary-confinement/>. Federal litigation was filed the next year. See *Shoatz v. Wetzels*, No. 2:05-MC-02025, 2014 U.S. Dist. LEXIS 9386 (W.D. Pa. 2014), available at [https://docs.google.com/file/d/1OpkCKbSoRieq3TUnIeFrWuJjFa2\\_f4X9HCT2fX9jBTnrkakoiswGyDsWk4Xt/edit?pli=1](https://docs.google.com/file/d/1OpkCKbSoRieq3TUnIeFrWuJjFa2_f4X9HCT2fX9jBTnrkakoiswGyDsWk4Xt/edit?pli=1). In 2014, Russell Shoats was released from solitary confinement to rejoin the general population. See Abolitionist Law Center, *Russell Maroon Shoatz Released From Solitary Confinement – First Time in General Population in More than 22 Years*, SAN FRANCISCO BAY VIEW, NATIONAL BLACK NEWSPAPER, <http://sfbayview.com/2014/02/russell-maroon-shoatz-released-from-solitary-confinement-first-time-in-general-population-in-more-than-22-years/>.

191. Letter from Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding Robert Cuff, to the United States (June 22, 2012), available at [https://spdb.ohchr.org/hrdb/22nd/public\\_-\\_UA\\_USA\\_22.06.12\\_\(7.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public_-_UA_USA_22.06.12_(7.2012).pdf).

192. Letter from Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, regarding Daniel Chong, to the United States (July 31, 2012), available at

In 2013, the U.N. human rights expert on torture called on U.S. authorities to end solitary confinement of a Louisiana man, Albert Woodfox, after four decades. Though U.N. special rapporteur Juan Mendez stated that solitary confinement “clearly amounts to torture and should be lifted immediately,” to date it has not.<sup>193</sup>

### C. Shadow Reports to U.N. Human Rights Monitors

Another human rights advocacy opportunity occurs when the United States is up for review by U.N. bodies checking on its compliance with international human rights guarantees.<sup>194</sup> The U.S. has ratified three of the nine major human rights treaties: the International Covenant on Civil and Political Rights (ICCPR); the International Convention on the Elimination of all forms of Racial Discrimination (CERD); and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>195</sup> These reviews of U.S. government policy evaluate policies with international human rights standards in issues such as racism,<sup>196</sup> torture,<sup>197</sup> and civil rights.<sup>198</sup> In each

[https://spdb.ohchr.org/hrdb/22nd/public\\_-\\_AL\\_USA\\_31.07.12\\_\(13.2012\).pdf](https://spdb.ohchr.org/hrdb/22nd/public_-_AL_USA_31.07.12_(13.2012).pdf).

Mr. Chong was awarded \$4.1 million in damages in 2013. See Stan Wilson, *Daniel Chong, Forgotten in DEA Cell, Settles Suit for \$4.1 Million*, CNN (Aug. 1, 2013), <http://www.cnn.com/2013/07/30/justice/california-dea-settlement/>.

193. *UN Rights Expert Deplores US Prisoners 'Torture'*, BIGSTORY.AP.ORG, <http://bigstory.ap.org/article/un-rights-expert-deplores-us-prisoners-torture>, (last visited Feb. 19, 2015).

194. Carole Bettinger-Lopez, Davida Finger, Meetal Jain, Sarah Paoletti, & Deborah M. Weisman, *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL'Y 337, n. 27 (2011); see also Pamela Quinn Saunders, *The Integrated Enforcement of Human Rights*, 45 N.Y.U. J. INT'L L. & POL. 97, 101-102 (2012).

195. See Margaret Huang, *"Going Global": Appeals to International and Regional Human Rights Bodies*, 2 BRINGING HUMAN RIGHTS HOME 105, 111 (Cynthia Soohoo, Catherine Albisa, & Martha F. Davis eds., 2009). The other six, which the U.S. has not ratified, include: the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); the International Convention on the Protection and Rights of all Migrant Workers and Members of their Families (ICRMW); the International Convention for the Protection of all Persons from Enforced Disappearances; and the Convention on the Rights of Persons with Disabilities. *Id.* at 110-111.

196. See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195; G.A. Res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966) (entered into force Jan. 4, 1969).

of these processes, the U.S. is required to submit reports to demonstrate its compliance with the specific human rights treaties. Human rights advocates submit alternative “shadow” reports which highlight problems in the U.S. and ask the U.N. to compel the U.S. to respond to those complaints and highlight problems when the human rights body makes its concluding observations about compliance.<sup>199</sup>

As an example, in 2014, prisoner human rights issues in the U.S. were examined by the United Nations during the review of the U.S. by the Committee against Torture. Dozens of human rights organizations submitted shadow reports to the U.N. pointing out issues with solitary confinement, immigration detention, shackling pregnant inmates, and other issues.<sup>200</sup> The Committee included many of these concerns when it issued its concluding observations about U.S. human rights compliance in November 2014.<sup>201</sup>

Other treaties also offered opportunities to underscore ongoing prisoner human rights problems like prisoner disenfranchisement. In 2013 dozens of community and human rights organizations submitted shadow reports to the U.N. Human Rights Committee pointing out problems with U.S. policies and practices when the US was up for review of compliance with the International Covenant on Civil and Political

197. See, e.g., Convention Against Torture, *supra* note 42.

198. See, e.g., International Covenant on Civil and Political Rights, *supra* note 38.

199. Eric Tars, *Who Knows What Lurks in the Hearts of Human Rights Violators? The Shadow (Reporter) Knows*, *Human Rights Shadow Reporting: A Strategic Tool for Domestic Justice*, 42 CLEARINGHOUSE REV. 475 (2009), available at [http://www.nlchp.org/Clearinghouse\\_Shadow\\_Reporting\\_2009-01](http://www.nlchp.org/Clearinghouse_Shadow_Reporting_2009-01). The process of organizing and submitting a shadow report is informal. See *Producing Shadow Reports to the CEDAW Committee: A Procedural Guide*, INTERNATIONAL WOMEN’S RIGHTS ACTION WATCH, <http://www1.umn.edu/humanrts/iwraw/proceduralguide-08.html> (last visited Mar. 12, 2015).

200. See *CAT Shadow Reports*, US HUMAN RIGHTS NETWORK, <http://www.ushrnetwork.org/cat-shadow-reports> (last visited Mar. 12, 2015).

201. Committee against Torture, *Concluding observations on the third to fifth periodic reports of the United States of America*, 1364th and 1267th Sess., Nov. 12-13, 2014, and adopted at 1276th and 1277th Sess., Nov. 20, 2014, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014), available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsuLMmIdNURtE47fFHU%2bcDW3YqC%2f3zHkM7HdrMe8Ha0T3LrxFZw2D BuPPjJtmrR1GUBC%2fjzvD8gcT%2fCPPgMygXRPGjD4yWY90dyGD0PyZiQO4>.

Rights.<sup>202</sup> Many of these concerns can be found in the concluding observations about the U.S. by the Human Rights Committee.<sup>203</sup> Similar shadow reporting by community and human rights organizations when the U.S. was undergoing review for compliance with the racial discrimination requirements of CERD yielded significant concerns in the areas of juvenile justice, criminal justice, access to public defenders, police brutality and detention at Guantanamo.<sup>204</sup> Additionally, every four years each country member of the U.N. undergoes an evaluation of their human rights record administered by the Human Rights Council in a process called Universal Periodic Review (UPR).<sup>205</sup>

#### V. PRISONER ADVOCACY WITH INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

There are also opportunities for prisoner advocacy with the Inter-American Commission on Human Rights (IACHR).<sup>206</sup>

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202. See Shadow Report Submissions Compiled by the US Human Rights Network to the United Nations Human Rights Committee (Sept. 13, 2013), *available at* [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT\\_CCPR\\_NGO\\_USA\\_15210\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_15210_E.pdf). See also DEMOCRACY IMPRISONED: A REVIEW OF THE PREVALENCE AND IMPACT OF FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES (2013), [http://sentencingproject.org/doc/publications/fd\\_ICCPR%20Felony%20Disenfranchisement%20Shadow%20Report.pdf](http://sentencingproject.org/doc/publications/fd_ICCPR%20Felony%20Disenfranchisement%20Shadow%20Report.pdf).

203. See Human Rights Committee, *Concluding observations on the fourth report of the United States of America*, 3044<sup>th</sup>, 3045<sup>th</sup>, & 3046<sup>th</sup> Sess., Mar. 13-14, 2014, and adopted at 3061<sup>st</sup> Sess., March 26, 2014, U.N. Doc. CCPR/C/USA/CO/4 (Apr. 23, 2014), *available at* <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhijKy20sgGcLSyqccX0g1nnMFNOUOQBx7X%2bI55yhIwIkDk6CF00Adiqu2L8SNxDB4%2bVRPkf5gZfbTQO3y9dLrUeUaTbS0RrNO7VHzbyxGDJ%2f>.

204. See Committee on the Elimination on Racial Discrimination, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, ¶ 17, 20-23, 229<sup>th</sup> & 2300<sup>th</sup> Sess., Aug. 13-14, 2014, and adopted at 2317<sup>th</sup> Sess., Aug. 26, 2014, U.N. Doc. CERD/C/USA/CO/7-9 (Aug. 29, 2014), *available at* [http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd\\_concluding\\_observations2014.pdf](http://www.ushrnetwork.org/sites/ushrnetwork.org/files/cerd_concluding_observations2014.pdf).

205. Terrence Rogers, *Using International Human Rights Law to Combat Racial Discrimination in the U.S. Criminal Justice System*, 14 SCHOLAR 375, 424 (2011).

206. Caroline Bettinger-López, *The Inter-American Human Rights System: A Primer*, 42 CLEARINGHOUSE REV. 581, 582 (2009). See also *What is the IACHR?*, ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN COMMISSION ON HUMAN

The foundation for its work is the 1948 American Declaration on the Rights and Duties of Man.<sup>207</sup> This set of human rights guarantees was adopted by the OAS months before the Universal Declaration of Human Rights.<sup>208</sup> The IACHR, based in Washington D.C., was founded in 1959 “to promote the observance and defense of human rights.”<sup>209</sup>

The IACHR offers a unique opportunity for individuals and organizations to bring human rights complaints directly against the U.S. and its states and have those complaints decided in the international arena.<sup>210</sup> People can file complaints against the U.S. with the IACHR only six months after they have exhausted domestic legal remedies, or they can show that seeking such remedies is futile.<sup>211</sup>

The IACHR provides a number of services for people who wish to file human rights complaints. There is a simple brochure which explains what it is, how it operates, and how to file complaints.<sup>212</sup> There are online forms for prisoners or others to fill out to file human rights complaints.<sup>213</sup>

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RIGHTS, <http://www.oas.org/en/iachr/mandate/what.asp> (last visited Mar. 12, 2015); *see also* DAVID WEISSBRODT, FIONNUALA NÍ AOLÁIN, JOAN FITZPATRICK, & FRANK NEWMAN, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* (4th ed. 2009) (describing the origins, functions, and responsibility of the Inter-American Commission on Human Rights).

207. *American Declaration of the Rights and Duties of Man*, ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN COMMISSION OF HUMAN RIGHTS (1948), <http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm> (last visited Feb. 18, 2015).

208. *See Our History*, ORGANIZATION OF AMERICAN STATES, [http://www.oas.org/en/about/our\\_history.asp](http://www.oas.org/en/about/our_history.asp) (last visited Mar. 12, 2015).

209. Caroline Bettinger-López, *The Inter-American Human Rights System: A Primer*, 42 CLEARINGHOUSE REV. 581, 582-83 (2009). *See also What is the IACHR?*, ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), <http://www.oas.org/en/iachr/mandate/what.asp> (last visited Mar. 12, 2015).

210. Caroline Bettinger-López, *The Inter-American Human Rights System: A Primer*, 42 CLEARINGHOUSE REV. 581, 583 (2009).

211. *See Rules of Procedure of the Inter-American Commission on Human Rights*, ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), Art. 31, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp> (last visited Mar. 12, 2015).

212. *Petition and Case System: Informational Brochure*, ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (2010), <https://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>.

213. *Instructions: Petition For Filing Petitions Alleging Human Rights Violations*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

Once a complaint is filed with the IACHR there is a preliminary decision whether the complaint meets their requirements.<sup>214</sup> If it does, it is assigned a case number and is forwarded to the U.S. for its response, which is normally expected in three months.<sup>215</sup> If the case is authorized to go forward, the IACHR can conduct investigations, hold public hearings, and visit the site of the complaint.<sup>216</sup> All public proceedings are held in Washington, D.C.<sup>217</sup> In serious and urgent situations, the IACHR can request the U.S. adopt precautionary measures to prevent irreparable harm against individuals while the entire human rights case is proceeding.<sup>218</sup>

Human rights advocacy can have an indirect impact on the U.S. judicial system as well.<sup>219</sup> For example, the IACHR challenged the legality of the death penalty for juveniles in a 2002 case, which many think helped set the stage for the U.S.

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[https://www.cidh.oas.org/cidh\\_apps/instructions.asp?gc\\_language=E](https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=E) (last visited Mar. 12, 2015).

214. See *Rules of Procedure of the Inter-American Commission on Human Rights*, ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), Art. 30, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp> (last visited Mar. 12, 2015). There is criticism that due to increased filings and budget problems, the IACHR can often take as much as four years for the IACHR to make the initial determination of admissibility, and an average of six and a half years from the beginning to the final decision. See *Maximizing Justice, Minimizing Delay: Streamlining Procedures of the Inter-American Commission on Human Rights*, THE UNIV. OF TEX. SCH. OF LAW HUMAN RIGHTS CLINIC, 4 (2011), [https://www.utexas.edu/law/clinics/humanrights/work/Maximizing\\_Justice\\_Minimizing\\_Delay\\_at\\_the\\_IACHR.pdf](https://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf).

215. See *Rules of Procedure of the Inter-American Commission on Human Rights*, ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), Art. 30, §3, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp> (last visited Mar. 12, 2015).

216. *Id.* at arts. 39 & 40.

217. Caroline Bettinger-López, *The Inter-American Human Rights System: A Primer*, 42 CLEARINGHOUSE REV. 581, 587 (2009).

218. See *Rules of Procedure of the Inter-American Commission on Human Rights*, ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), Art. 25, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp> (last visited Mar. 12, 2015).

219. See Penny M. Venetis, *Enforcing Human Rights in the United States: Which Tribunals are Best Suited to Adjudicate Treaty-Based Human Rights Claims?*, 23 S. CAL. REV. L. & SOC. JUST. 121 (2014).

Supreme Court to outlaw it in its 2005 decision *Roper v. Simmons*.<sup>220</sup>

Like in other U.N. human rights advocacy, there are limitations on what the IACHR can do for prisoners and others who file human rights complaints.<sup>221</sup> While it offers a public forum to air human rights complaints and the organizing that involves, its decisions are advisory.<sup>222</sup> The U.S. has refused to comply with some provisional orders of the IACHR, most blatantly in death penalty cases.<sup>223</sup> Advocates should also realize there is an Inter-American Court for Human Rights, established in 1979, which, like the Commission, is part of the OAS. However, it is much less effective for U.S. human rights complaints because the federal government has refused to sign on to the treaty which gives the court jurisdiction against the United States.<sup>224</sup>

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220. See *Roper v. Simmons*, 543 U.S. 551 (2005). For the IACHR decision, see *Domingues v. U.S.*, 12.285, Inter-Am. Comm'n H.R., Report No. 62/02, 84-85 (2002). See William A. Schabas, *International Law, the United States of America and Capital Punishment*, 31 SUFFOLK Transnat'l L. Rev. 377, 398 (2008).

221. See *Rules of Procedure of the Inter-American Commission on Human Rights*, ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), Arts. 39 & 40, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp> (last visited Mar. 12, 2015); See Inter-Am. Comm'n H.R., Rules of Procedure, Art. 39: *On-site investigation* – Art. 40: *Friendly Settlement.*, available at <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp> (last visited February 21, 2015).

222. Caroline Bettinger-López, *The Inter-American Human Rights System: A Primer*, 42 CLEARINGHOUSE REV. 581, 584-85 (2009).

223. See Jo M. Pasqualucci, *Interim Measures in International Human Rights: Evolution and Harmonization*, 38 Vand. J. Transnat'l L. 1, 24 n. 119 (2005), for a discussion of the Raul Garza death penalty case where the IACHR stated the actions of the U.S. “emasculates the efficacy of the Commission’s process, deprives condemned persons of their right to petition in the Inter-American human rights system, and results in serious and irreparable harm to those individuals, and accordingly is inconsistent with the state’s human rights obligations.” *Id.* (citing Inter-Am. Comm'n H.R. Report No. 52/01, Case 55, 12.243, Juan Raul Garza (April 4, 2001)); see also 3 Sandra Babcock, *Human Rights Advocacy in United States Capital Cases*, in BRINGING HUMAN RIGHTS HOME: PORTRAITS OF THE MOVEMENT 91, 103-105 (Cynthia Soohoo, Catherin Albisa, & Martha F. Davis eds., Praeger Publishers 2008).

224. Caroline Bettinger-López, *The Inter-American Human Rights System: A Primer*, 42 CLEARINGHOUSE REV. 581, 584 (2009).

### A. Examples of IACHR Prisoner Human Rights Advocacy

In February 2002, petitions on behalf of prisoners at Guantanamo Bay were submitted by the Center for Constitutional Rights, the Center for Justice and International Law and others requested precautionary measures be taken by the IACHR to preserve their human rights.<sup>225</sup> In March 2002, the IACHR granted the request for precautionary measures advising the U.S. “to take urgent measures necessary to have the legal status of the detainees at Guantanamo Bay determined by a competent tribunal.”<sup>226</sup>

In September 2012, a number of human rights groups filed a 96 page brief supporting their petition to their IACHR challenge to the human rights problems of incarcerating juveniles in Michigan for life.<sup>227</sup> Petitioners raised the cases of more than thirty juveniles who were sentenced to life in prison in violation of provisions of the American Declaration of Human Rights which guarantee freedom from inhumane treatment, protection of children, freedom from cruel or unusual punishment and the right to rehabilitation.<sup>228</sup> In 2013, the IACHR held a hearing on

225. See *Guantanamo Advocacy at the Inter-American Commission on Human Rights (IACHR)*, CENTER FOR CONSTITUTIONAL RIGHTS, <http://ccrjustice.org/IACHRHearingGTMO> (last visited February 21, 2015).

226. *Precautionary Measures regarding Guantanamo: PM 259/02 – Persons detained by the United States in Guantanamo Bay*, ORGANIZATION OF AMERICAN STATES: INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, <http://www.oas.org/en/iachr/pdl/decisions/GuantanamoMC.asp#MC25902> (last visited February 21, 2015); see also Steven R. Ratner, *Jus Ad Bellum and Jus in Bello After September 11*, 96 AM. J. INT’L L. 905, 913 (2002); see also Derek Jinks & David Sloss, *Is the President Bound by the Geneva Conventions?*, 90 CORNELL L. REV. 97, 114, n. 80 (2004).

227. See *Hill v. United States of America*, Inter-Am. Comm’n H.R., Case No. 12.866 (Sep. 4, 2012), available at [https://www.aclu.org/files/assets/case\\_no\\_12866\\_final\\_observations\\_regarding\\_the\\_merits\\_of\\_the\\_case\\_including\\_annexes.pdf](https://www.aclu.org/files/assets/case_no_12866_final_observations_regarding_the_merits_of_the_case_including_annexes.pdf). This brief contains overviews on the jurisdiction of the IACHR, reasons for taking the case, and powerful facts. For a comprehensive look at the intertwined litigation and campaign for human rights of juveniles in Michigan see 3 Deborah LaBelle, *Ensuring Rights for All: Realizing Human Rights for Prisoners*, in BRINGING HUMAN RIGHTS HOME: PORTRAITS OF THE MOVEMENT 137, 139-145 (Cynthia Soohoo, Catherin Albisa, & Martha F. Davis eds., Praeger Publishers 2008).

228. See *Hill v. United States of America*, Inter-Am. Comm’n H.R., Case No. 12.866 (Sep. 4, 2012), available at

juvenile incarceration with adults at the request of the ACLU and others.<sup>229</sup>

In 2014, the IACHR expressed concern over the detention conditions at Rikers Island prison in New York a year after the death of an inmate with disabilities and urged the U.S. to take the necessary steps to investigate the death and prevent a reoccurrence.<sup>230</sup> At the request of the ACLU and many other human rights organizations, the IACHR held a 2013 hearing to investigate the use of solitary confinement in the US.<sup>231</sup>

## VI. CONCLUSION

Prisoners in the United States are subjected to inhuman treatment every hour of every day in every city and state in the country. The nation's federal courts are very difficult challenges for complaints by prisoners. Human rights advocacy, while lacking the enforcement mechanisms of federal litigation, does offer prisoners opportunities to raise the injustices of their conditions and treatment to people who are open to a fair examination of the evidence. Many advocates use an intertwined advocacy approach combining litigation and human rights advocacy. Some use only human rights advocacy. This kind of advocacy offers opportunities for people to tell their stories, to document abuses and mistreatment, to educate the public and media, to establish connections with other human rights

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[https://www.aclu.org/files/assets/case\\_no\\_12866\\_final\\_observations\\_regarding\\_the\\_merits\\_of\\_the\\_case\\_including\\_annexes.pdf](https://www.aclu.org/files/assets/case_no_12866_final_observations_regarding_the_merits_of_the_case_including_annexes.pdf).

229. See Melodie Arian, *Human Rights Situation of Children Deprived of Liberty with Adults in the United States*, HUMAN RIGHTS BRIEF, CENTER FOR HUMAN RIGHTS & HUMANITARIAN LAW (March 14, 2010), <http://hrbrief.org/2013/03/human-rights-situation-of-children-deprived-of-liberty-with-adults-in-the-united-states/>.

230. See Press Release, Organization of American States: Inter-American Commission on Human Rights (IACHR), IACHR expresses Concern over Detention Conditions at Rikers Island Prison, United States, a year after the tragic death of an inmate (Sept. 18, 2014), *available at* [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/104.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/104.asp).

231. See American Civil Liberties Union, *Written Statement of the ACLU for the Inter-American Commission on Human Rights: Hearing on Solitary Confinement in the Americas*, (March 12, 2013), *available at* [https://www.aclu.org/files/assets/aclu\\_iachr\\_testimony\\_solitary\\_confinement\\_final\\_cite\\_checked.pdf](https://www.aclu.org/files/assets/aclu_iachr_testimony_solitary_confinement_final_cite_checked.pdf); see also Center for Constitutional Rights, *Written Testimony of the Center for Constitutional Rights: Human Rights and Solitary Confinement in the Americas: Thematic Hearing Before the Inter-American Commission on Human Rights*, CENTER FOR CONSTITUTIONAL RIGHTS (March 12, 2013), *available at* [http://www.aclu.org/files/assets/ccr\\_testimony\\_to\\_iachr\\_for\\_thematic\\_hearing\\_3-12-13.pdf](http://www.aclu.org/files/assets/ccr_testimony_to_iachr_for_thematic_hearing_3-12-13.pdf).

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advocates locally and internationally, and be part of the movements for social change that are ultimately the only chance to bring justice into this horrible system.