



Main Model United Nations Conference

Frankfurt am Main, Germany

18th Session

2nd to 5th of March 2023

SDGs – Leave No One Behind

BACKGROUND GUIDE

HUMAN RIGHTS COUNCIL

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Main Model United Nations Conference 2023

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1. Introduction

Honourable Delegates,

In the name of the entire team, we welcome you all warmly to the 18th Edition of the MainMUN conference. We, Camilo Hernandez and Nicolas Geschwinde, will be your Chairs for the upcoming days and therefore, we would like to use the opportunity to introduce ourselves.

My name is Camilo, an international student studying political sciences and economics at the Goethe university and I am interested and engaged in the current challenges that the world is facing. I have been collecting experiences in different MUNs for almost 3 years and now I am happy to be chairing the Human Rights Council. I know that I will enjoy hearing your ideas in the different approaches of this council and also I will guide you in the debate of the conference.

I am Nicolas and I'm in my final year of studying Political Science and History. This is now my third year of being part of the amazing MainMUN team and last year I had the great privilege of serving as Secretary-General for the 2022 edition of MainMUN. This year, I look forward to chairing for the first time and I couldn't have wished for a better committee than the HRC. My advice: be brave when representing your Member State and don't shy away from being passionate!

The topics to discuss at the MainMUN 2023 HRC will be:

Combating Human Rights Violations Against Minorities

Eradicating Exploitative Working Conditions for Incarcerated People

This Background Guide will introduce you to the topics and provide the basic information necessary. However, you are required to do further research before the conference to be prepared regarding your Member State's stances, contributions and allies. The best way to do so is by writing a position paper. If you submit it to us in time, we will provide you with a feedback on your paper.

Please also study our Rules of Procedure beforehand. Our committee is aimed at an intermediate level so we will welcome beginners as well and provide explanations as we go through the sessions, but we do expect you to be familiar with the most common motions. The MainMUN 2023 Human Rights Council (HRC) will observe the standard MainMUN Rules of Procedure for the committee work; no special rules apply.

If you have any remaining questions, feel free to contact us via Ryver or in between sessions and don't be afraid to raise points of information during the sessions.

We are excited to meet you all at MainMUN 2023 in presence after two years of online conferences!

With best regards, Camilo & Nicolas

2. The Human Rights Council

The Human Rights Council is an inter-governmental body within the United Nations system and a subsidiary body of the General Assembly. The Council is made up of 47 United Nations Member States, which are elected by the General Assembly for a period of three years, and holds responsibility for the promotion and protection of all human rights around the globe. Its foundation in 2006 was the result of a reform process in the UN and represented the replacement of the Commission on Human Rights (CHR). Since then, it has been addressing situations of human rights violations and making recommendations on them.

Located in Geneva, Switzerland, its duty entails responding to urgent human rights situations by addressing issues regarding accountability and liability for violations of international human rights and humanitarian law as well as serving as a general forum for debate and dialogue on all human rights issues. In order to strengthen its efforts, the Human Rights Council cooperates with non-governmental organizations, national human rights organizations as well as other civil society actors.

Each year, the HRC holds regular sessions, with each annual series of sessions being referred to as “cycle”, and, at any time, a special session may be requested if an acute human rights violation or a similarly urgent event occurs.

Another important function the HRC is entrusted with is the Universal Periodic Review (UPR) mechanism, which is conducted in order to ensure the UN Member States’ conformity with human rights. Each Member State of the UN has to submit to the periodic review to assess the fulfillment of its human rights obligations, with each review cycle taking about four years to complete.

3. Topic I: Combating Human Rights Violations Against Minorities

3.1. Introduction

The fight against human rights violations has been an ongoing battle since the declaration of human rights was written in 1948. This struggle is mainly present in small groups with differences from the dominant groups, small groups being minorities in a world with differences. Every country in the world has a minority population, which adds to the variety of their civilizations (OHCHR n.d.a). Therefore, all countries are exposed to any violation against their minorities, which makes it necessary to protect their human rights even more, reinforcing and safeguarding the existing mechanisms to prevent any violation.

Throughout history, minorities have been excluded from majority societies and have become non-essential to decision-making on issues that concern them. This exclusion brings inequality and injustice to minorities who are not represented in a country's decision making. Minorities "are among the most disadvantaged groups in society members are often subjected to injustice and socio-economic discrimination. Their exclusion from power is often combined with the denial of dignity, identities, and cultures" (Alam 2015: 76). It is necessary to have an understanding of the inequalities that exist against minorities and to analyse the mechanisms that can help to address these situations from different perspectives in order to prevent discrimination against minorities.

Due to this discrimination and vulnerability from minorities, it is necessary and essential to treat them in a particular way to ensure their human rights as those of the majority of the society (Alam 2015:381). They need to have this special treatment to save them from abuses of any kind and achieve substantive equality (Alam 2015: 381). Without these special treatment on their rights, there would be no equality between minorities and majorities since the institutions would not accept them with their specific characteristics as studied by the Minority Schools in Albania (PCIJ) (Alam 2015: 381-382).

In the following, the term minority, and the attempts to define the term internationally will be explained. Consequently, the work done by the United Nations to empower minorities and the different documents that help to defend their rights will be shown. Subsequently, the role of the Sustainable Development Goals (SDGs) and their importance in diminishing inequalities between minorities and majorities is introduced. The problematic situation during COVID-19 is exemplified and special cases of violations against minorities such as the Uyghur in China and the Hazara in Afghanistan are illustrated. Finally, delegates are given different questions that may interest them for their research as well as readings and links that may help to emphasize the topic.

3.2. Minorities

The debate to define what a minority is has been controversial at the United Nations (UN), with the result that an exact definition has not been reached with all member states of the organization in recent years. The term minority first came into use in the International Covenant on Civil and Political Rights by General Assembly Resolution 2200A (XXI) in 1966, entering into force in 1976, focusing on its article 27, which defends the rights of the minorities (General Assembly 1966).

However, this was not the only time that the definition of the term was discussed internationally. In 1979, the Special Rapporteur of the Sub-Commission on prevention of discrimination and protection of minorities, Mr. Francesco Capotorti, presented the first definition of the term to the United Nations, which, beyond being a definition, "was a more general study on the rights of minorities under article 27 of the International Covenant on Civil and Political Rights" (General Assembly

2019: 10). It was rejected by the Office of the High Commissioner for Human Rights (OHCHR) (See further readings). Later, in 1985, Judge Mr. Jules Deschenes presented to the United Nations a proposal concerning the definition of the concept in which he analysed the term to the point of arriving at a definition (See further readings). This attempt of define the concept of minorities helped to start new debates afterwards on the topic but it was not an official definition.

Additionally, there were several attempts to reach an agreement to decide what the definition of the term should be (General Assembly 2019: 10), but member countries did not know how to use this general term and therefore no agreement was reached, so it came to be said that each country should, according to its jurisdiction, have its definition for the term depending on when and for what it is to be used (General Assembly 2019: 9). However, "Akermark stresses that the lack of definition gives states an excuse to refuse the existence of minorities in their own country" (Alam 2015: 378). Thus, many countries refused to accept that there are human rights violations against minorities on their territory, since accepting this would be a danger to the objective of uniting the nation as one in strength and customs, which further violates international law by denying the rights of minorities (Alam 2015: 378-380).

Additionally, the United Nations examined the term throughout history how the term has been used in the Report of the Special Rapporteur on minority issues in 2019. This was indispensable for the United Nations to have decided to integrate the following definition so that it can be used in a general way and without confusing in its use:

"An ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these. A person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status" (General Assembly 2019: 18).

That said, the Human Rights Council will emphasize this definition when discussing minorities and violating their human rights at the conference because of the diversity in which the term can be used without being limited. Thus, delegates should focus on the definition given by the United Nations and analyse the minorities in their country considering the characteristics given above.

3.3. The United Nations and Minorities

The importance of protecting the human rights of minorities has become crucial to avoid any discrimination and violations against them. The United Nations as a global organization plays an indispensable role in bringing this issue to the forefront and seeking ways to avoid violations.

The United Nations implemented the International Covenant on Civil and Political Rights in 1966 as mentioned before. This article is "the most widely acknowledged provision affording protection to minorities" (Alam 2015: 378) used internationally after a massive use of violence in that time

against minorities and ethnic groups (Alam 2015: 385). Later, the United Nations implemented the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in 1992 (See General Assembly Resolution 47/135). Unfortunately, not all countries have ratified or signed this declaration. The arguments against ratification or signature are the unimportance of these to support and enforce the human rights of minorities. However, the ratification of this declaration is a symbol of the joint support of countries internationally, thus accepting the importance of this issue due to the existing violations against minorities.

This declaration was the first step to formally securing every detail of the human rights of minorities in a declaration. Following the establishment of this declaration, the United Nations and the OHCHR created the Working Group on Minorities in 1995. The objective of this group was primarily "to provide a regular formal structure within which the provisions of the Declaration could be promoted and implemented" (Hadden 2007: 286).

Thus, the General Assembly Resolution 74/165 was adopted in 2019 on the improvement and effectiveness of approaches to the right to liberty that refers to the rights of minorities, which must continue to be addressed to curb violations. This year, on the 30th anniversary of the adoption of the UN Declaration on the Rights of Minorities, the United Nations has focused on the hashtag "All in 4 minority rights" assuring that their rights "contribute to the political and social stability and progress of States; important ingredients to maintain peace and stability of society" (OHCHR 2022e).

In addition, the OHCHR as part of the United Nations, has sent over the years different Special Rapporteurs whose role is to help strengthen and promote the rights of minorities. They analyse the different situations where minorities are located on this issue, cooperate with the different actors in this regard and guide the necessary entities to continue promoting and fulfilling the human rights of minorities (OHCHR 2022d).

The Human Rights Council resolutions 6/15 of 2007 and 19/23 of 2012 also refer to special periods on minority issues where different issues are discussed. The last session was held on December 1 and 2, 2022 reinforcing and encouraging the focus on defending human rights of minorities in the world.

Moreover, the UN guide for minorities (OHCHR 2000: 3) presents the essential role of NGOs in the protection of minorities' human rights due to their active monitoring, reporting, and denouncing of violations against them. Thus, NGOs actively participate in different sessions concerning minority rights by making public the information collected (OHCHR 2000: 3-5).

Consequently, NGOs are present in terms of decision making in the countries' public policies (Tortajada 2016: 266). Thus, with the help of different campaigns and doing both social and political activism, NGOs reinforce the human rights of minorities (Tortajada 2016: 266).

Also, the focus of NGOs in both politics and society is paramount due to the discrimination that occurs in these two approaches. On the one hand, minorities are ignored, and their voices are not heard. On the other hand, society discriminates against minorities with its behaviour to communities or individuals if it does not conform to the behaviour of them causing minorities exclusion in society.

3.4. Minorities and the Sustainable Development Goals (SDGs)

The Sustainable Development Goals (SDGs), introduced in resolution 70/1 of the General Assembly in 2015, have been a significant contribution "to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind" (United Nations n.d.). The aim is "that development must balance social, economic, and environmental sustainability" (United Nations Development Program n.d.). This balance between social, economic, and environmental sustainability makes it possible to achieve the proposed goals and balance the extreme conditions in the world concerning pollution, injustice, and inequality. For this reason, the developing goals are connected, forming cooperation and the link between them, which allows that when each goal advances in a specific area, it helps another goal to advance in the same way.

The fulfilment of human rights and human dignity must also be achieved to achieve the goals proposed by the United Nations. Therefore, fulfilling the human rights of minorities continues the progress towards achieving the SDGs. For example, the achievement of goal 4 "quality education" is crucial for the inclusion of all concerning education, considering the role of human rights, which provide a framework for analyzing disagreements between many educational factors (Fredman et al. 2018: 6).

This goal should be reinforced to combat the ignorance of both minorities and majorities on different issues, whether it is directly related to violations against minorities, or the lack of resources for minorities to understand different tools in the country where they live.

In addition, goal 8 "decent work and economic growth" is of great help in avoiding the exploitation of minorities in specific jobs. Examples of exploitations are discrimination in the workplace and their treatment as a minority, unequal pay, lack of job opportunities due to discrimination and the state's failure to include minorities in the country's development. This violates target 8.5 equal pay for work of equal value (also connected with target 10.1 of goal 10 reducing income inequalities), and target 8.7 eradicating forced labour and modern slavery. Consequently, goal 10 "reduced inequalities" plays a significant role in defending the human rights of minorities if we want to end unfair treatment of minorities. The dehumanization sees these inequalities of minorities by their customs, by their differences in beliefs and their exclusion in state programs and social activities. Mainly their exclusion from the state without ensuring their rights and dignities, or worse violating these under the law. This affect target 10.2 promoting universal inclusion, target 10.3 ensuring equal

opportunities and ending discrimination, and target 10.4 adopting policies promoting equality. By fulfilling and strengthening the SDGs and their targets, the conditions of minorities can be improved in society.

The human rights of minorities can be strengthened if cooperation takes place to achieve these goals. Delegates should therefore be able to use and understand the Sustainable Development Goals (SDGs) and their relevance to minorities to reinforce the human rights and dignity of minorities. This connection will help delegates to take a critical stance and seek new ways to combat the violations of minorities that the world is currently facing.

3.5. Minorities and Covid-19

During the pandemic, discriminatory acts against minorities, denying them services and excluding them, have increased (The United Nations Network on Racial Discrimination and the Protection of Minorities 2020: 2). The people who are being discriminated against, intimidated or by working in changing environments are more highly affected by Covid-19 (OHCHR 2022 n.d.b). These groups of people are minorities included. These discriminatory acts have been mostly due to the circumstances in which the minorities live, mostly in groups where the community cannot be isolated to the lack of preventive information given by the states to the communities by coupling it in their language and facilitating the arrival of this information. Also, they are more exposed to direct contact with Covid-19 due to their generally high-risk, low-paying jobs such as cleaning, transportation, or other services (OHCHR 2020). In this way, discrimination against minorities is reflected in society observing the need to act and ensure a dignified life, respecting their human rights.

In that sense, the United Nations Network on Racial Discrimination and the Protection of Minorities is a network bringing “more than 20 UN departments, agencies, programmes and funds, enhancing cooperation and dialogue on minorities across the UN system” (OHCHR 2020). The network made a statement in 2020 focusing on emergency measures of the states that should “ensure equal access to health care to those without health insurance, identification papers or social security, or neglected by humanitarian response networks” (The United Nations Network on Racial Discrimination and the Protection of Minorities 2020: 4). Additionally, the network emphasized on the obligations combating discrimination by implementing the principle of equality, incorporating COVID-19 terminology that is accepted by public health professionals, helping to spread inclusive information, analysing the incidents in minorities, and sharing those transparently and including agencies or groups to these mechanisms (The United Nations Network on Racial Discrimination and the Protection of Minorities 2020: 5-6).

Consequently, the Report of the Special Rapporteur for the OHCHR emphasized the racism and violations against minorities and other groups, in which access to health care has been limited or

even denied because they are not part of the majority society by historical discrimination against these groups (General Assembly 2022: 4). In addition, this report includes information and guidance to states on how social indicators, including health care, should be taken into account (General Assembly 2022: 7).

That said, states faced a massive challenge during the COVID-19 pandemic, in which many did not have the necessary mechanisms in place to accommodate minorities or ignored possible discrimination against minorities. The role of agencies, groups, NGOs, and institutions helped to emphasise the importance of the inclusion of groups and to help combat the virus from all aspects of all groups. Consequently, the pandemic highlighted the need for sufficient protection of minorities and the reinforcement of mechanisms that should be implemented to avoid future discrimination in health and society.

3.6. Current Situation in Member States

Despite United Nations resolutions and declarations for defending the human rights of minorities, there are still violations against them, who are increasingly demanding their rights.

The Special Rapporteur on minority issues, Fernand de Varennes, has expressed the lack of commitment of the United Nations in reinforcing the issue of minorities in the organization. He has called for the reinforcement and refocusing of how the issue is dealt with in the organization since it has been ignored in the institution (OHCHR 2022a). Similarly, Rita IZSÀK, Former Special Rapporteur on Minority issues emphasises that “[t]he right to participation [of minorities] is essential because if minorities are part of the process, we have a better chance of their needs being reflected” (OHCHR 2022a).

Unfortunately, the violations against minorities continue to be a big issue internationally. On one side, human rights violations against the Uyghur population and other Muslim-ethnic groups in China have been prominent and controversial issue these years. Between 2017 and 2020 there were approximately 1.5 million Turkic Muslims (among whom were people from the ethnic group Uyghur) taken to re-education camps (Khatoon et al. 2021: 1415). The Uyghur are “one of the 55 formally perceived minority ethnic gatherings in China” (Khatoon et al. 2021: 1415). This minority has suffered from discriminatory abuses against them based on their beliefs and have been exposed to inhumane treatment over the years. Examples of the violations against the Uyghur are especially forced displacement, violation of their right to freedom and to practice their religion freely and discrimination because of their customs as a community. The Chinese government's statement in The State Council Information Office of the People's Republic of China refers to respecting and protecting the rights of all ethnic groups in Xinjiang. China accepts the state's responsibility to ensure equality and uphold the human rights of minorities by respecting their civic, political, economic, social,

and cultural rights and freedoms (Xinhua 2021). However, despite being responsible for ensuring human rights, the Chinese state has failed to put its official declarations into practice, with the human rights of minorities increasingly endangered.

Following that, the Chinese government has created a binary opposition between "We" and "Muslim Uyghurs", through its new communication strategies, techniques, and efforts to relate to Islamic knowledge and training in Xinjiang (Khatoon et al. 2021: 1420). This illustrates of how social ruin and abuse have been elevated to a limitless and meticulous plan imposed on the Uyghur minority in China to eradicate Uyghur culture (Khatoon et al. 2021: 1435).

Consequently, "the Xinjiang Uyghur Autonomous district involves one 6th of the complete Chinese landmass and has [C]hina's most plentiful asset of oil and gas" (Khatoon et al. 2021: 1415). For this reason, the Uyghur territory is also one of the critical points for the Chinese government.

The UN Human Rights Office has been assessing this issue under the terms of international human rights law and analyzing the Chinese government's counter-extremism and counter-terrorism measures initiated in 2017 (OHCHR 2022b).

Another example of violation of human rights of minorities is Afghanistan, since the transition of government in the country under the Taliban, violations against minorities such as religious minorities and against women's human rights have increased. The Human Rights Watch reported that at least 700 people have been killed and injured as a result of 13 assaults on Hazaras minorities that the Islamic State has taken credit and being accused of others as well causing that additional assaults could take place due to the Taliban's escalating crackdown on the media, particularly in the provinces (Human Rights Watch 2022).

Consequently, these violations hinder the Hazara community's direct access to the rights to education, religious practices, and fundamental freedoms (Human Rights Watch 2022), which also obstacles progress on the United Nations Sustainable Development Goals (SDGs), especially in goal 4 (quality education), goal 8 (decent work and economic growth), goal 10 (reduced inequalities) and goal 16 (peace, justice, and strong institutions). In addition, the Hazar community is limited in terms of their freedoms and the hatred that the government (Taliban) has been spreading to the community, making society exclude them and deny them access to places or services.

The UN Human Rights Office has been concerned about the situation in Afghanistan regarding these violations and about the reports made by Special Rapporteur Richard Bennett, focusing on the massacres of the Hazara group, the oppression of women and the lack of help from the government, which should be especially investigated for these measures (OHCHR 2022c). In this sense, the Report of the Special Rapporteur about human rights in Afghanistan showed how the ethnic and minority groups have suffered from historical persecution which has worsened since the beginning of the

Taliban government (Human Rights Council 2022: 10-11).

An alarming case regarding human rights violations of minorities is the genocide in Myanmar of the Rohingya people. The human rights of this ethnic group have been violated since the independence of Myanmar and the restrictions of the ethnic group to have human rights (Anwary 2018: 93-95). The genocide of the military forces of Myanmar included sexual violations as intimidation and punishment to the minorities (Shubin 2020). Forced displacement has been one of the biggest violations against the Rohingya where thousands of people have fled the country. In addition to this, most have been denied their right to a nationality and most of the people leaving the country are stateless. Therefore, Gambia brought this case to the International Court of Justice (ICJ) and the court decided on 22 July 2022 in this case “Gambia v. Myanmar” that they have jurisdiction in this regard, which will continue to be studied next year (International Court of Justice 2022a: 2).

The Jurisdiction of the court argued the decision of the ICJ because of the legal character of the case. The admissibility of the court (supported by the UN General Assembly), the existence of a dispute (making clear that the state does not have to be included in the victims, but making the dispute clear under the court), and by the article VIII of the Genocide Convention (Rizwanul 2022). The ICJ also addressed the “Gambia v. Myanmar” case to the Human Rights Council emphasizing the international support, especially in accountability, that should be available for the defence of the human rights of minorities (International Court of Justice 2022b).

The position of the ICJ regarding the defence of human rights and minorities has been seen as liberal in its approach to jurisdiction in this case, “Gambia v. Myanmar”, and its new role and obligation under the genocide convention (Rizwanul 2022). Unfortunately, the ICJ and other international courts’ limitations to defending the human rights of minorities are present. One of these limitations is the power of the international courts, which challenges the supremacy of states (Torrisco-Casals 2021: 493). Also, the acceptance of its jurisdiction is sometimes limited for some states because of the ceding of sovereignty (Torrisco-Casals 2021: 492). Furthermore, the legitimacy of international courts is essential for the effectiveness of its exercise when states have to accept the court’s decision (Torrisco-Casals 2021: 494) and its accountability to protect people under the law (Torrisco-Casals 2021: 495). However, many states do not legitimize the position of international courts and argue that the state’s role is to bring accountability to the country without international intervention, making it difficult for international courts to proceed in many cases.

Violations towards minorities are also present in Europe. A clear example of this is the persecution of the Sinti and Roma and their discrimination in the society.

The Sinti and Roma’s position in Europe is full of poverty, lack of opportunities, discrimination and social exclusion (Central European University 2020). This exclusion affects specially children due to the insufficient language skills they have for the school (Central European University 2020). An

example of this was found in the study on the situation of Roma and Sinti in Germany in the year 2021, which shows that 40% of the people interviewed between 18 and 50 years of age did not have a professional qualification (Grunau 2021).

Two-thirds of respondents also feel discriminated against for belonging to their community (Grunau 2021). This discrimination is especially prevalent among extreme right-wing groups who threaten minorities for their cultural differences (Central European University 2020). Radical nationalism has increased in recent years in Europe where extremist right-wing parties take a clear racist stance against these minorities, thus affecting their human rights (Grunau 2021). They are excluded from society leading to a condition of fear and denial of social integration due to the experience they have been subjected to.

That said, Secretary General Antonio Guterres (2022) also emphasized the xenophobia that is presented by extremists towards these minorities and stressed the importance of governments in ensuring the human rights of these minorities. In addition, the secretary general emphasizes in the "full and equal access to education, employment, housing, health care, and public services to all their people without discrimination based on race, religion or ethnicity" (Antonio Guterres 2022).

With these examples and mentions, the 21st century is no different from the last century in terms of progress in defence of the rights of minorities and the violations that have occurred in them. Despite the work done by organizations and treaties in which minorities are defended, there is still much to be achieved.

3.7. Further Questions to Research

- What constitutional articles protect the human rights of minorities in your country and how can these rights be enforced in your country? Which concept does your country have regarding the definition of minorities?
- How do the instruments to protect the human rights of minorities work in your country and what has been done or can be done to improve them?
- How can implementation mechanisms for protecting and securing of the human rights of minorities be strengthened internationally? What role could your country play in this sense?
- What is the expectation of your country regarding the SDGs and minorities?

We strongly encourage delegates to focus on practical mechanisms that could work in our heterogeneous world to strengthen the human rights of minorities. Each country follows different perspectives regarding this issue. Nevertheless, the delegates should be prepared to use innovative

ways to enhance this with the tools their country gave or make their ideas and arguments clear in the debate against Minority violations.

3.8. Further Readings

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Useful pages for research:

- -United Nations library - Provides a big research data of useful document from the United Nations: <https://digitallibrary.un.org/>
- Homepage of OHCHR and United Nations - Providing information regarding the organization: https://www.ohchr.org/en/ohchr_homepage
- The World Factbook - Provides basic information of the countries: <https://www.cia.gov/the-world-factbook/>
- UN environment program - Provides ways to search about SDGs and issues regarding this: <https://www.unep.org/search/node?keys=minorities&category=All&topic=All®ion=All>

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4. Topic II: Eradicating Exploitative Working Conditions for Incarcerated People

4.1. Introduction

4.1.1. Defining Incarceration

Incarceration in the context of the United Nations (UN) is a cross-cutting issue that touches upon several key aspects such as the universal reach of human rights, the rule of law and protection against abuse of power. While incarceration is a very extensive term to describe a multitude of different situations, we will define it as the status of persons in:

- Temporary custody of the police with the express goal of release (for example to determine an identity, for disorderly conduct or simply because of excessive drunkenness, colloquially called “being placed in the drunk cell”. In recent years, the practice of so-called “preventive detention has also become more and more prevalent¹)
- Temporary custody as part of the person’s pre-trial (remand prisoner)
- Permanent custody as a result of a conviction or as a Prisoner of War (POW)
- Permanent custody without a fair trial

According to the World Prison Brief, roughly 11 million people “are held in penal institutions throughout the world, either as pre-trial detainees/remand prisoners or having been convicted and sentenced (Fair/Walmsley 2021: 2).

4.1.2. A Short History of Incarceration

Prisons – an integral part of criminal justice systems since time immemorial? Not quite. What we would nowadays call a prison or the practice of incarceration as part of a penal system has its origins,

¹ This coincides with predictive policing based on data and previous interactions with the police. When preventive detention is permissible, people who have been involved with the police and who are, according to the police, likely to be so again, can be detained for a defined period of time for the “prevention of a future act”.

at least in the western world, at the turn of the 16th century in Amsterdam. It is reported that in 1589, a 16-year-old thief was compelled to perform labour instead of being sentenced to death as was customary. In 1596 then, the Amsterdam house of correction, the Rasphuis, initially opened for twelve inmates. This triggered a European-wide wave with similar “houses of correction” being founded in the wake in Germany, Austria and England (van der Slice 1936: 45–46). Over the centuries, the penal system and its prisons underwent rapid changes concerning organisation, methods and ultimately, its purpose (Morris/Rothman 1995: 7). Prisons have also at the same time been lauded for bringing a new age of humanitarianism, at least compared to previous notions of punishment as “poetic sense of justice” and “eye for an eye”, but also the first seeds of what would later be called cruel and unusual punishment have begun to spread (ibid.: 9). These have their roots in the very conception of work as substitution for punishment and to see the total result of this seed, we will jump from the “Age of Enlightenment” to the 20th century.

The utilisation of incarceration and prison labour has reached a terrible peak during WWII in Nazi Germany with the widespread use of concentration camps (“Konzentrationslager”) and extermination camps (“Vernichtungslager”). The crimes against humanity committed by Germans in these camps include cruel and harmful incarceration conditions (for example poor hygiene, torture and mistreatment, as well as a lack of food), human experiments using prisoners as unwilling test subjects often leading to their mutilation or slow and painful death and most notably the facilitation of the industrialized mass murder of “undesirables”, including People of Jewish Faith, Disabled People, Queer People, Romani People, Slavic People and many more. In the most notorious extermination camp, Auschwitz-Birkenau, approximately 1.5 million people were murdered. While many of those murdered did so in the gas chambers, a significant number also succumbed to cruel prison labour which has been prevalent not only in the extermination camps, but also the concentration camps. This practice has been called “extermination through labour” (“Vernichtung durch Arbeit”). Most concentration camps served the purpose of interning people for forced labour in aid of Germany’s war economy. The eventual death of the incarcerated workers was not only tolerated, but often the explicit goal.

The crimes against humanity committed by Germany during WWII help illustrate the two significant ways prison labour is used to the detriment of incarcerated people. One is the labour exploitation (often without regard for labour standards afforded to free workers) and the second is hurting or even killing prisoners through labour. We shall regard prison labour under these two particular aspects in the following chapters.

4.1.3. Why the General Disinterest in Prison Labour?

While prison conditions have been discussed and baseline rules have been established internationally (see the chapter on the UN Framework), prison labour has not been given as much attention for several reasons. This is especially troublesome considering how, by definition, prisoners are subjected to an extreme power imbalance due to the monopoly on using force by their captivators. Whether their incarceration is justified through a functioning state of law or not, prisoners are particularly defenceless against human rights violations. Further, we can trace the general disinterest in the well-being of prisoners to two significant reasons.

Firstly, many states employ a so-called “law and order” doctrine. This means a strong presence of the state represented by the police in public with far-reaching competencies and equipment to deal with unwanted behaviour and strong punishments. Long prison sentences, capital punishment and “an eye for an eye” are often associated with “law and order”. Finally, crime and those who commit crimes are usually described as morally evil and a plight to society that must be removed at all costs. Under this doctrine, prisoners and would-be-prisoners are often normatively stripped of their worth to society and regarded as “human waste” which requires storage and management, not rehabilitation (Lynch 1998: 839). It is no surprise that under these justifications, there are no incentives to improve prison conditions and adverse conditions can also be seen as a justified means of punishment because “they deserve it for their crimes”.

Secondly, the privatisation of the prison sector in some Member States has increased the incentive for incarceration for petty crimes to increase the labour force within prisons; Prison labourers are both cheap and have little choice in working. Many Member States, regardless of their prison conditions, have legalized prison labour for these reasons - for example the United States of America, China, Ethiopia and Germany.

Both factors contribute to the unwillingness of both lawmakers and the general public to address the issue of exploitative working conditions in prisons.

4.2. The International Framework on Incarceration and Labour Rights

As with many human rights issues discussed within the UN, our first baseline is provided by the **Universal Declaration of Human rights**, adopted by the General Assembly in 1948. Its first Article simply reads

“All human beings are born free and equal in dignity and rights”.

Further, Article 5 stipulates that

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

Lastly, Article 23 regards remuneration, saying that:

*“Everyone, without any discrimination, has the right
to equal pay for equal work”
(United Nations 1948).*

We can derive two important essentials of prison labour from this declaration alone:

- Prison Labour cannot be used as torture, degradation, or punishment
- Prison Labour must be remunerated and afforded equal rights and standards compared to the work of non-prisoners

Looking at the previous chapter on the history of incarceration, we can also determine that the horrors of the Second World War and the treatment of prisoners have made their way into this declaration.

We will take a look at one of the first frameworks implemented to safeguard standards for prisoners. As detailed, the practice of prisons is a relatively new one and steeped in notions of “work through betterment”. It is no wonder that the first prisoners to gain meaningful rights were prisoners of war (POWs). The Geneva Convention is a framework to set legal standards for military engagement and the humane treatment of civilians and military personnel on active duty. Its first version was developed in 1864 and a significant revision in 1949 brought it to the four treaties now referred to as the Geneva Convention which is in force today. Its 3rd Geneva Convention, the **Geneva Convention relative to the Treatment of Prisoners of War** was established during the revision in 1949 and defines in section III on the topic of captivity how POWs can be utilized as prison labourers. Under the convention, prison labour is generally permitted for physically fit prisoners as long as their work is not detrimental to their physical and mental well-being (Article 49). Further, all labour regulations by the Detaining Power have to be applied (Article 51), stipulating a pay of at least “one-fourth of one Swiss franc for a full working day (OHCHR 1949).²

To see which standards apply to non-POWs, we can regard **the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work**. The ILO is a UN Agency with 187 Member States to set global labour standards. Unlike other UN bodies, the ILO has declared that all its conventions are binding for Members of the organisation, regardless of ratification (ILO 1998). Thus, ILO declarations and labour rights have a universal character akin to human rights. Its Declaration on Fundamental Principles and Rights at Work is a framework adopted in 1998 (revised in 2022) and calls for the “elimination of all forms of forced or compulsory labour” (ibid.). The ILO explicitly *excludes* prison labour described as “any work or service exacted from any person as a consequence of a conviction in a court of law” (ILO 1930: Article 2) from their definition of forced

² This very roughly equates to 12.50\$ adjusted for inflation today.

labour. Other labour forced upon opposition against the “established political, social or economic system” is included (ILO 1957: Article 1). Applying the ILO framework regulating of prison labour depends on the reason for the incarceration. Political prisoners would generally be included in the ILO framework while “regular” convicts would not. However, since the rule of law and the legal framework is never black and white and instead subject to the actual situation in each Member State, this creates a somewhat fuzzy area regarding prison labour and when the ILO framework should be applied. Also, while ILO standards are careful to exclude prison labour as a penalty from their definition of forced labour, common reading of these standards do include labour forced *under* penalty, meaning labour that is demanded under the threat of repercussions (ILO 2009: 5). In the realm of prison labour, this might include measures such as solitary confinement, the loss of privileges such as personal items or visitation rights, or even the denial of parole (also see chapter 4.3).

In recent times, the UN has provided additional resolutions concerning the treatment of prisoners, being **GA Resolution 45/111 “Basic Principles for the Treatment of Prisoners”** in 1990, as well as **GA Resolution 70/175 “UN Standard Minimum Rules for the Treatment of Prisoners”** in 2015, also nicknamed the Nelson Mandela rules. Both affirm the right to work for prisoners, as long as it is “meaningful remunerated employment” (GA 1990: Article 8), that “will maintain or increase the prisoners’ ability to earn an honest living after release” (GA 2015: Rule 98) and is not detrimental to their well-being (“not of an afflictive nature”) (ibid.: Rule 96-97). Average wages are to be paid and working hours should be based upon the rules for free workers (ibid.: Rule 100 + 102).

Lastly, the UN has also taken measures to increase compliance with these rules not only for Member States, but for private corporations as well. The **UN Global Compact** is a voluntary pact between businesses and the UN in order to facilitate, at its broadest level, the Millennium Development Goals and Sustainable Development Goals. The Global Compact operates under ten principles of human rights, labour, the environment and anti-corruption. Principle 4 covers “the elimination of all forms of forced and compulsory labour” (UN Global Compact n. d.). Currently, the compact measures roughly 21.000 participating members globally, ranging from Small or Medium—Sized Enterprises (SMEs) and NGOs to large companies. Some notable companies include Royal Dutch Shell, Microsoft, Nike, Samsung and Nestlé. The UN Global Compact has no regulatory mandate, however. While the compact is active in facilitating discussions and publishing reports on translating human rights and business practices, the impact the membership has on its members is minimal. All in all, the compact seems to have its use mainly in “bluwashing”³ the actions of its members (Berliner/Prakash 2015: 132).

³ Deceptive marketing strategies by companies to appear more socially responsible by association with the UN.

Regarding the work of the HRC special procedures envision the mandate for independent human rights experts, so called Special Rapporteurs, whose duty is to “report and advise on human rights from a thematic or country-specific perspective” (UNHRC n. d.). Regarding prison and work conditions, the HRC has given a mandate to several Special Rapporteurs, including but not limited to the Special Rapporteur on:

- Arbitrary Detention,
- Contemporary Forms of Slavery,
- Torture and other Cruel, Inhuman or Degrading Treatment or punishment,
- The Negative Impact of the Unilateral Coercive Measures on the Enjoyment of Human Rights.

However, it must be noted that despite the framework on forced labour and several mandates for Special Rapporteurs, the focus on prison labour is largely left to civil rights groups and NGOs. While human rights violations including slavery and forced labour are generally being monitored on a per-Member-State-basis, there can be no observations made regarding changes to the framework to formally include prison labour in forced labour definitions, nor are there any apparent measures to comprehensively tackle the issue of prison labour. In a recent report by the Special Rapporteur on Contemporary Forms of Slavery, no mention is made of prison labour. The report also states that no unified approach towards slavery has been introduced yet and that “The actions of Member States thus remain central to the struggle to eradicate slavery [...]. States are the main duty bearers in ensuring the realisation of the human right to be free from slavery and servitude” (UNHRC 2019).

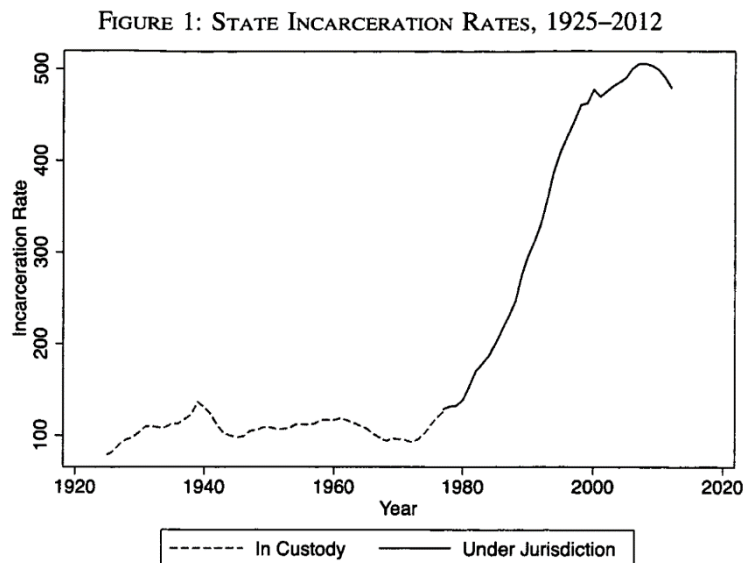
4.3. Current Situation in Member States

Taking the framework as established in the previous chapter, prison labour as a right or a means for sustainable rehabilitation within society is legal and generally exempted from forced labour conventions. However, we will now focus on several case studies to see how this framework is implemented in Member States and how human rights situation can occur from that. We will use these Case Studies to exemplify the difference in exploitative working conditions regarding the exploitation of human labour for economic gain and for afflicting punishment.

4.3.1. Case Study: Prison Labour and Labour Exploitation – USA

The USA has the most prisoners worldwide –in absolute and relative numbers. Of its 329 million people, roughly 2 million are incarcerated. Worldwide, for every 100.000 people, there are 140 prisoners; in the US, this number is 629 (Fair/Walmsley 2021: 6). This trends back to the 1970s,

as seen in the following graph (Pfaff 2015: 173), when the administrations under President Richard Nixon and later Ronald Reagan have increased efforts to tackle drug use under the “War on Drugs”. Prosecution and sentencing have increased so sharply under this doctrine, that “the number of persons in state and federal prisons for drug offenses increased by approximately 1,300%” (Jensen et



Note: Data from the Bureau of Justice Statistics' National Prisoner Statistics ("NPS").²

al. 2004: 101). It has been noted that the increase in prosecution of drug offences has disproportionately affected African-American communities deliberately.

The American Civil Liberties Union estimates that two out of three prisoners in the US are incarcerated workers (ACLU 2022: 24). For state prisons, the US has created a state-owned enterprise (SOE) called Federal Prison Industries, Inc. (also called UNICOR), whereas private prisons are certified to use prison labour under the Prison Industry Enhancement Certification Program (PIECP). In what has been nicknamed the “prison-industrial complex”, after the so-called “military-industrial complex” (Selman/Leighton 2010: 78), US prisoners produce over \$11 billion in goods and services every year, but often get paid no more than \$1 an hour (ACLU 2022: 6).



ILL 1 - Prisoners in a UNICOR facility

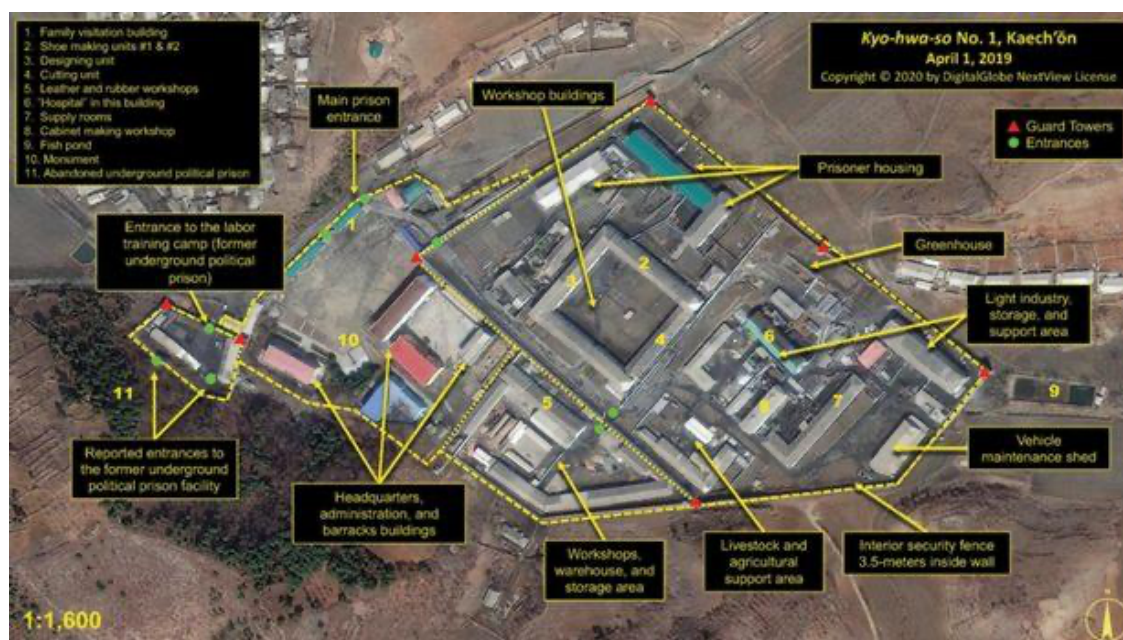
Refusing work can lead to being “placed in disciplinary of administrative segregation – which often is a form of solitary confinement.” (ACLU 2022: 48). Further, “those who refuse to work also typically

lose all privileges, including access to personal telephone calls, family visitation [...] and most state prisoners additionally risk losing the opportunity to shorten their sentence through earned ‘good time,’ effectively extending their incarceration” (ibid.).

Companies that have or continue to outsource labour to prisoners or procure items made from prisoners include McDonald’s, Victoria’s Secret, Bayer, Microsoft and several chemical and petroleum companies such as Merck, British Petroleum, Exxon Mobile and Shell (Burrows 2016). Many of these are also members of the UN Global Compact.

4.3.2. Case Study: Prison Labour and Afflictive Punishment – North Korea

In 2013, the Human Rights Council established a commission of inquiry on the human rights situation in the Democratic People's Republic of Korea (colloquially North Korea), in response to a report of the Special Rapporteur on the situation of human rights in the DPRK including “violations associated with prison camps, torture and inhuman treatment, [and] arbitrary detention” (UNHRC 2013). According to Amnesty International, an estimated 200.000 are interned in so-called Kwanliso or political penal labour colonies (AI 2011). The report submitted by the commission paints a



ILL 2 - Aerial View of a suspected DPRK penal labour colony – concentration camp

harrowing picture of continued and severe human rights violations in the context of incarceration and forced labour, including child labour. The commission found that the prison system, while extermination was not its sole and explicit goal, implemented living conditions that tacitly allowed hundreds of thousands to die, thus matching the definition of extermination as a crime against humanity. Such conditions include being “Forced to carry out grueling labour, [while] inmates are provided food rations that are so insufficient that many inmates starve to death. [...] The death

toll is further exacerbated by executions, deaths from torture, the denial of adequate medical care, high incidence of work accidents, lack of shelter and lack of appropriate clothes” (UNHRC 2014: 325).

Further:

“The Commission finds that the experience of inmates in political prison camps in the DPRK involves all of the characteristics of enslavement. Inmates are subjected to a lifetime of arduous and perilous forced labour. They are treated as if there were ‘ploughing animals’, as former inmate Shin Dong Hyuk described their fate. The prisoners are often so weakened from malnourishment and disease that they are literally worked to death. [...] Failure to perform forced labour is subject to severe punishment including summary execution⁴, torture and ration cuts that further aggravate starvation” (UNHRC 2014: 326. Emphasis in original).

It must be stressed that the cruel treatment of the prisoners by severe malnutrition does not stem from a general food shortage in the DPRK but has to be interpreted as a “deliberate policy” (ibid.: 240).

4.3.3. Case Study: Prison Labour and Rehabilitation – Norway

Lastly, we will take a look at Norway’s prison system and their implementation of prison labour. The previous chapters have look at prison systems under the lens of “law and order” which is part of retributive justice. The opposing view is called restorative justice, striving to achieve justice and rehabilitation of inmates by letting them participate in a bilateral process (Wenzel et al. 2008: 375). In the context of prisons, this is reflected in voluntary and meaningful work that transposes valuable skills onto inmates aiding them in the reintegration in society after their sentence without reoffending. In Norway, the push for a more restorative approach is largely due to the Norwegian Association for Criminal Reform (KROM) after 1968 (Mathiesen 1974: 45). One of KROM’s successes was the abolition of forced labour for inmates in 1970 and for “juvenile delinquents” in 1975 (Papendorf 2006: 128).

Prisoners in the Norwegian system are afforded all rights of free citizens, including access to health-care and - in an effort to increase reintegration during the transition phase from prisons to release – also the social benefits system via the Norwegian Labor and Welfare Organization (Viggen/Landrø 2017: 334). The main difference between the prison labour we have studied in the previous cases and here is the focus on utilising work not as a means of punishment, cheap source of labour, or because prisoners are perceived to have less rights. Instead, the Scandinavian model insists on reintegrating a prisoner into society and there are several theoretical models explaining why this may work. Meaningful and transferable work in prisons may give ex-inmates the tools to participate in gainful employment after release, overcoming the issues ex-inmates face on the labour market and giving them higher stakes and motivation to participate in society and a routine and perspective

⁴ Summary Execution: Immediate execution without a full and fair trial.

outside of a life with crime. Norway's prisoners have open access to "education or vocational training programs that are more often directed at preparing them for life after release" (Ugelvik 2016: 391).

Lastly, ex-inmates performing legal work are introduced to a legal environment, spending more time with tasks and co-workers in this legal context and less time in former criminal contexts, thus decreasing exposure and opportunity to criminal behaviour. These aspects help to lower recidivism and to increase the establishment of a crime-free life post-sentence (Skardhamar/Telle 2012: 630–631). Norway's successful implementation of meaningful prison labour in the 1970s thus has decreased the reoffending rate, i.e. the rate at which ex-inmates commit another crime post-release, from "60-70% to only 20% in recent years" (Bolorzul Dorjsuren 2020).

4.4. Further Questions to Research

This BGG gives you a first overview of the topic of prison labour. As delegates to MainMUN 2023, it is your task to build on this foundation and do further research on the topic. To aid you in this, you can use the following questions which will help you solidify your knowledge:

- What is your Member State's stance on prison labour?
- How should the UNHRC expand on the current framework on prison labour? How can it define exploitative working conditions? How can it define fair prison labour useful to prisoners' developments?
- Regarding the private prison sector, how can the UNHRC increase compliance with international law for non-state actors? How can it combat the economic incentives to incarcerate people for petty crimes to increase cheap labour force?
- How should the UNHRC address the (international) trade with goods produced by prison labourers?
- How can the UNHRC increase the effectiveness of their own regulation and review mechanisms, such as the work of the Special Rapporteurs or the Universal Periodic Reviews?

4.5. Further Reading

Freedom United, "Prison labor and modern slavery": <https://www.freedomunited.org/prison-labor-and-modern-slavery/>

Wikipedia, "Prison Industrial Complex": https://en.wikipedia.org/wiki/Prison_industrial_complex

Shang, Xixue/Van Limberghen Guido, "How Could Prison Products Come into the International

Market? Analysis of the Consistency between WTO and ILO Rules”:

<https://www.theartsjournal.org/index.php/site/article/view/1133>

Harvard International Review, “The Shadows Workforce: Prison Labor and International Trade”:

<https://hir.harvard.edu/the-shadow-workforce-prison-labor-and-international-trade/>

Journeyman Pictures: “Talking To Someone Who Escaped From North Korea’s Prison Camp” [19:13]:

<https://www.youtube.com/watch?v=QUhj4JQkqAs> (Content Warning: drawn illustrations of death and torture of minors)

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4.7. Illustrations

ILL 1 - https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp

ILL 2 - <https://www.dailystar.co.uk/news/world-news/north-korea-using-human-corpses-21785081>