

## **Preface**

The purpose of this report is to investigate the unjust detainment policies of countries all over the world. It will include descriptions of the cruel treatment that is endured by detainees every day and the varying detainment facilities into which they have been incarcerated. A simple definition of detainment is to keep an individual in custody or temporary confinement. The definition of policy is a plan or course of action, made from a government, political party, business, individual, or group, intended to influence and determine decisions, actions, and other matters.<sup>1</sup> Combined together, a detainment policy means a course of action taken by various officials pertaining to the imprisonment of an individual. This may not initially sound like an alarming issue but when analyzed from different perspectives, it suddenly seems important. The study of detainment is the study of, "Human rights in the administration of justice: protection of persons subjected to detention or imprisonment."<sup>2</sup> This perspective will emphasize the fact that many policies are unjust and inhumane. This more specific definition provides a greater understanding of the issue of focus in this report.

It is hard for some to realize the significance of this issue because the outside world is censored to what occurs behind closed doors in detainment facilities. The fact remains that the life of a detainee involves being tormented every day. It is one thing to have rights violated, but imagine being alone across the world in another country, isolated from family and friends. Many detainees are wrongfully accused of their crimes, and yet foreign countries continue to have unjust policies. It is estimated that as many as 20 percent of the men in captivity at the Guantanamo Bay detainment facility are innocent.<sup>3</sup> There are many illegal prisons in the world

which disgrace accepted human rights standards. It is the fact that innocent people are being punished for crimes they did not commit, individuals are being forced to stay in foreign countries against their will for petty reasons, and major violations of human rights are occurring, that the world should give deeper care into the issue of Detainment policies.

## Summary

This report focuses on the issue of detainment policies from a global perspective. It will begin with background information about various methods and policies of detainment. This section will also include an explanation of why certain detainment policies fall under the category of an issue. Following the background, there will be an expert's insight and major contributions towards the issue. Irvin Waller, a passionate champion of victims' rights, provides intellectual input on a global scale. A diagnosis will occur afterwards of the role of control. This will examine primarily who has and needs control regarding the decisions involved in detainment. It will also combine who cares and who should care about the issue. Religious and spiritual views additionally influence the varying causes and solutions to detainment policies. Three detailed case studies will present the seriousness of the unjust incarceration being carried out throughout the world, particularly USA, China, and Tunisia. There is the role of international organizations which help protect the rights of unfair detainment victims. The report will inform whether or not these organizations have been successful in their efforts of protection. Along with the three case studies, the prevalent role of Canada in resolving the issue will be debated. The report will wrap up with a proposal of possible solutions to the issue and a conclusion. Additional information and opinions will be reinforced by an appendix at the end of the report.

A bibliography will be associated into the report, containing references from several forms of media. Books, websites, essays, magazines, videos and personal interviews are such media.

## **Background**

Most policies are made to influence and determine decisions, actions, and other matters in a positive way. Whenever there are positives, there will always be negatives. These bad policies are demonstrated all around the world making detainment policies a global issue. Imprisonment policies have always been an issue however, they were not looked at seriously until the implementation of the United Nations' Universal Declaration of Human Rights.

The Universal Declaration of Human Rights was created in response to the crimes against humanity perpetrated during World War 2. This declaration was adopted by the United Nations general assembly in 1948.<sup>4</sup> These were the first standards of human rights adopted on a global basis. It consists of 30 articles that outline fundamental human rights. These rights are universal which means they span national borders and trump national law. Not all of the articles in the declaration pertain to detainment policies but a select few show which rights are being violated and why this is a serious issue. (See Appendix A) These select articles focus on the main human rights being violated by corrupt detainment policies.

Unjust detainment policies have been an issue for over thousands of years. They can be acknowledged as far back as medieval times and even biblical times. There were prisons used for detention during biblical times, and an example would be that the Bible emphasizes the imprisonment of Joseph in Egypt.<sup>5</sup> In medieval times, dungeons were used to hold prisoners; those who were not killed or left to die there often became galley slaves or faced penal transportations. Penal transportation involves the banishing of convicted criminals to

disciplinary sites. Oftentimes, these settlements were used to exile prisoners and separate them from the general population. These remote correctional facilities, due to the changing of geopolitical boundaries, are largely considered relics of the past.

Although the issue of detainment policies was not taken seriously until after the Second World War, it had been going on during the war and many years before that. During the war, the obvious example of unjust detainment policies would be the Nazis detaining millions of Jews. Another example is the North American use of internment camps during the Second World War for people of Japanese ethnicity. After the attack on Pearl Harbour, Canada and the U.S. feared that Japanese immigrants would rebel and aid their mother country so they forced the Japanese Canadians into internment camps.<sup>7</sup> They were not released until a few years after the war due to suspicions and trust issues.

Regarding holding policies in different regions of the world, they are relatively consistent with their expectations. There are 192 Member States of the United Nations dispersed throughout the world. In order to be part of the organization, “a state must be an all peace-loving state that accepts the obligations contained in the United Nations Charter and, in the judgment of the Organization, are able to carry out these obligations”.<sup>8</sup> The UN was responsible for creating the declaration of human rights, and as such, its member states should ubiquitously uphold the ideals set forth by this document. This includes but is not limited to detainment policies. An example of a foreign state with policies analogous to the western world is Hong Kong, China. In July 2008, a Hong Kong Court of Appeals ruled that the government had unlawfully detained four non-residents who had filed torture claims. The court of Appeals

found the government in violation of article 5(1) of the Hong Kong Bill of Rights. Under this act, detention must not be arbitrary and the grounds and procedure for detention must be certain and accessible.<sup>9</sup>

Although many countries of the world share similar expectations, they also have many corrupt officials and unjust policies. The Universal Declaration of Human Rights is a great initiative for the resolution of unjust detainment policies. Even with the declaration however, human rights continue to be violated through the illegal incarceration of individuals.

## **Renowned Expert**

Irvin Waller is an author and university professor who is internationally pursued as an expert and speaker on reducing crime and protecting victims. He is a supporter of victims' rights, and he currently serves as the president of the US-headquartered International Organization for Victims' Assistance. Waller's Ph.D. in law helps him accomplish all of his achievements. He was also the founding executive director of the International Centre for the Prevention of Crime, which is affiliated with the United Nations.<sup>10</sup>

He has received awards from the National Organization for Victim Assistance (NOVA) and the World Federation for Mental Health for his work leading to the adoption, by the UN, of the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power.<sup>10</sup> This has influenced a victim movement world-wide.

Irvin Waller lives in Canada where he is a professor of criminology at the University of Ottawa. He advises governments all over the world on how to lessen crime and protect victims. Waller has worked on national commissions in the USA, Canada and South Africa, and he has advised governments in more than 40 countries.<sup>11</sup> Since both violence and violation of victim's rights are taking place in detention facilities, Waller would be a prime example of an advisor for detention policies.

Waller's major solution to the issue of illegitimate imprisonment involves guaranteeing rights for the victims of crime. Waller describes that:

"Victims of crime want respect, safety, reparation and justice. Governments talk about it but it is time to rebalance justice and invest in meeting the needs of victims. He identifies the needs of victims and the standards agreed by governments. He uses science to show what police and courts must do to **guarantee** those **rights** as well as where legislators must invest to **guarantee services** and **nurture reparation**."<sup>10</sup>

His recent books "Less Law, More Order: The Truth about Reducing Crime" and "Rights for Victims of Crime: Rebalancing Justice" allow policymakers and citizens to obtain a grasp of what prevents crime and guarantees rights for victims, including those who are withheld for unjust causes. The interest by governments across the world in the books has led to great success.

Waller and his research, makes prevention knowledge understandable and convincing. He uses success stories to show that thwarting violence and fraud within the legal system is

affordable and achievable. His research structures solutions to stopping crime in terms of how governments spend taxes on victims and prison policy.<sup>10</sup> His research has led to large scale improvements and investments regarding the issue on a national and international level. Mr. Irvin Waller has contributed a substantial amount of time and effort regarding detainment policies and deserves every acknowledgement that he has received and the many more that he will receive in the future.

### **Role of Control**

The role of control in the issue of detainment policies ultimately belongs to the country/facility doing the detaining. There are many governments, political parties, businesses, individuals, and groups that manipulate policies for their own gain, mistreating prisoners for an economic or political advantage. These corrupt organizations find that breaking the law benefits them in some way, even though these policies may be inhumane.

The United Nations has a significant amount of power when it comes to international law, but it is clearly demonstrated through the issue of illegal imprisonment that even the UN has its limits. Ideally the UN should be able to charge into illegal prisons and force their disestablishment. In many detainment facilities, innocent individuals are being withheld, as evidenced by the approximate rate of 20% innocence in Guantanamo Bay.<sup>3</sup> These innocent men and their families are particularly invested in who controls the power of detainment. With their

rights violated every day through torture and malnourishment, effective and just control is an absolute must for these victims of detainment.

Illegal prisons should be shut down all together but, for the heavier detainment facilities such as Guantanamo, political interest can often interfere. The United Nations should be granted sufficient authority to give annual, or perhaps even monthly, inspections to see if facilities are adhering to human rights laws, regardless of the offending country.

In 2005, Guantanamo held approximately 550 people from over 40 different countries<sup>3</sup>, further demonstrating the global nature of the issue and the necessity to approach solutions from a united perspective of control. These countries that should start to care more about their own citizens being detained in other countries. These countries can apply pressure on the US and the United Nations assembly to facilitate improved, global cooperation regarding imprisonment and achieve a more universally acceptable control of detainment.

After 9/11, many people were taken prisoner and questioned even if they were innocent. Most of the detainees were held in solitary confinement for at least two years. Almost none had access to a lawyer or had contact with their families. None had access to any court or judicial progress for testifying their innocence. These are executive detentions totally outside international law that only the party in control can implement. From these observations, it is clear that the countries of origins do not give the care they should about their own being detained in foreign countries. The countries that are lacking this care fear having citizens detained in foreign countries will give them a bad reputation. There are also financial costs which governments would like to avoid. It costs money to bring detainees back to their home

country and it also costs to send officials overseas to negotiate. So governments tend to 'forget' about no name innocents. Considering these inconveniences are only minor relative to the importance of freedom, innocent people should always come first.

The whole world should care about the role of control when it comes to detainment policies. No human should have to go through what goes on in illegal prisons and strict correctional facilities. People tend to blow off this issue as it seems impossible that it would ever happen to them. One individual was detained in Cuba for simply being in a car accident. Fortunately he was from Canada and had support from Canadian officials. If that individual was from another country, he may have not been so lucky. Therefore, the role of control should be broadened from just the country/facility doing the detainment, to a more international perspective.

### **Religious and Spiritual Views**

Most prisons have two common goals, to, "Discourage behaviour that is harmful to human rights and the fundamental norms of civil life, and to repair, through the penal system, the disorder created by criminal activity".<sup>12</sup> Oftentimes, prisoners are forgotten by society. Prisoners are often overcome by feelings of isolation, shame and rejection. These feelings threaten their hopes and aspirations for a better future. Some individuals would not be able to get through confinement without religious and spiritual guidance. Every offender has the right to exercise their religious and conscientious views while in detainment. This is known as

religious and spiritual accommodation, and officially means “to provide access to an adequate level of resources (leadership, opportunities for worship, educational resources, religious articles, dietary requirements) to allow offenders to practice their religion or spirituality as fully as they desire (up to a level that is generally available to people in the community) within the correctional setting”.<sup>13</sup>

Fortunately for those being detained in countries such as Canada, these rights are guaranteed by the Canadian Charter of Rights and Freedoms and are as directed in the Corrections and Conditional Release Act (CCRA) and Regulations (CCRR). Unfortunately, many countries do not strictly follow the Universal Declaration of Human Rights implemented by The United Nations. Without these basic principles, countries are breaking international law when it comes to the detainment of individuals from other countries. Article 18 of the declaration of human rights clearly states that “Everyone has the right of freedom of thought, conscience and religion; this right includes freedom to change his/her religion or belief, and freedom, either alone or in a community with others and in public or private, to manifest his/her religion or belief in teaching, practice, worship and observance.”<sup>13</sup> If these rights are not being met, the facility doing the detainment is acknowledged to have unjust policies.

A simple way to ensure that these specific rights of religious and spiritual views are being kept is to bring in prison chaplains. Chaplains are delegated with the task of “helping the incarcerated rediscover a sense of purpose so that, with God’s grace, they can reform their lives, be reconciled with their families and friends, and possibly, assume the responsibilities and duties of returning to society.”<sup>14</sup> A prison chaplain is to provide spiritual and religious care to

those who have been incarcerated. Success in these areas may impact how a criminal lives his/her life after release. Unfortunately, chaplains are often limited to small scale prison facilities. If chaplains were permitted to enter larger detainment facilities or illegal prisons, one aspect of rights violations may be overcome and possible solutions to the mistreatment of detainees may be found. A chaplain may not only meet the psychological needs of prisoners, but they may also change a guard's view on how he should treat his fellow man.

Religions often strive to work towards justice. Christianity is one such example. Rev. Munroe of the Grenfell United Church describes that Christians feel they have a conscience to try and make things better regarding incarceration and justice. They preach about proper treatment of those imprisoned and often travel to detention centers to make sure that individuals are being looked after. Christians are big supporters of Amnesty International which makes sure rights of detainees are being kept. Religious people like to ask justice to seek truth. Some faiths and denominations believe that humans should not be allowed to make certain laws as they are corrupt and misguided. Religions would like to see more of a balance between focusing on reparations to the victims and just policies. In one case, a store robber was caught and the storeowner did not press charges. Instead, he asked the robber to give reparations for the harm he caused the store. The robber agreed and the storeowner hired him as an employee under surveillance. The religious storeowner and religions in general believe in God's justice.<sup>15</sup> Forgiveness is an essential component of many faiths, as evidenced by its inclusion in many holy texts, including the Lord's Prayer which states, "And forgive us our trespasses, as we forgive

those who trespass against us". If an individual is forgiven and that individuals forgive others, God's justice is being fulfilled.

Recent events have displayed that not all religions support the resolution of this issue. Homosexuality is currently illegal in Uganda as it is in many sub-Saharan African countries. It is punishable by incarceration in prison for up to 14 years. A homophobic imprisonment and death penalty was recently proposed and the law was supposedly motivated by religion. This demonstrates that not all religions are against unjust prosecution and detainment.

Ministers frequently speak the truth about individuals who face the challenges of detainment. This energizes congregations to develop a conscious about the issue and hopefully forgive those who are detained and those doing the detaining. These religious and spiritual views have the power to influence the political, social, and cultural aspects of the many unjust detainment policies throughout the world today.

## **Case Studies**

### **Case Study 1: United States**

The United States has the highest incarceration rate in the world. The United States also maintains the largest detention infrastructure in the world, which by the end of 2007 included 961 sites either directly owned by or under contract with the federal government, according to the [Freedom of Information Act Office](#) of the U.S. Immigration and Customs Enforcement (ICE).<sup>16</sup> (See [Map of Detention Sites](#) –Appendix B)

The rapid growth of the U.S. detention infrastructure has been focused in large measure by policies aimed at deporting non-citizens convicted of certain crimes. Data has shown that 18,690 immigrants coming into the U.S. had no criminal conviction, not even for illegal entry or low-level crimes like trespassing. More than 400 of those with no criminal record had been incarcerated for at least a year. A dozen had been held for three years or more; one man from China had been locked up for more than five years. The average detention stay that ICE cites as evidence of its effective detention management is, "Nearly 10,000 had been in custody longer than 31 days".<sup>17</sup> These numbers are only immigrants alone. Just imagine those numbers on top of the rest of America's population, (approximately 313,230,000),<sup>18</sup> that gets incarcerated.

Aside from non-citizens convicted of certain crimes, those confined in U.S. immigration detention centres include undocumented immigrants, unaccompanied minors, and asylum seekers (a person who, from fear of persecution for reasons of race, religion, social group, or political opinion, has crossed an international frontier into a country in which he or she hopes to be granted refugee status)<sup>1</sup>. These detainees are held in an array of detention sites, including dedicated immigrant detention centres, privately run prisons, federal penitentiaries, state and county jails, and juvenile detention centres.

U.S. detainment practices have not been confined to its territory. According to media and activism reports, in recent years U.S. authorities have funded detention activities of other countries in the Americas, including Mexico, Honduras, and Guatemala. In addition, U.S has major roles in Cuba, Afghanistan, and Iraq regarding detainment.

The vast majority of foreign detainees in the US come from Mexico, Afghanistan, and Iraq but an increasing number of detainees are coming from across the globe, representing

almost every country in the world. On average, those awaiting deportation spend 31 days in detention while asylum seekers spent on average 64 days in detention in 2005, with nearly a third of detained asylum seekers remaining in detention for more than 90 days.<sup>19</sup>

U.S. detention facilities have always been troubled with problems, including claims of physical abuse of detainees, inadequate medical care, lack of access to legal counsel, and inappropriate conditions of detention, such as confining administrative detainees alongside convicted criminals in jails and prisons. These problems have come to attention through a series of lawsuits filed against U.S. Immigration and Customs Enforcement in recent years, as well as through a number of reports and investigations undertaken by national and local media, government agencies, rights organizations, academic institutions, and other international organizations.

There have been two major detainment facilities in which are located in foreign countries that America performs unjust detainment policies.

### **Abu Ghraib Prison**

The Abu Ghraib prison is a detainment facility located approximately 20 miles west of Baghdad, Iraq. As many as 4000 prisoners were executed at Abu Ghraib Prison in 1984.<sup>20</sup>

Abu Ghraib was divided into "open" and "closed" wings. The open wing held all varieties of real or suspected activists. The "closed" wing was closed because its inmates were permitted no visitors or outside contact. Cells measured approximately four meters by four meters and held an average of 40 persons.<sup>20</sup>

As of 2001, Abu Ghraib prison may have held as many as 15,000 prisoners, many of who were subject to torture. Hundreds of these detainees had disappeared in the early 1980's during the Iran-Iraq war.<sup>20</sup> Such persons have been detained without charge for close to 2 decades in extremely harsh conditions. Many of the detainees were used as subjects in the country's outlawed experimental chemical and biological weapons programs.

Saddam Hussein declared a unique pardoning to thank the Iraqi people for their "agreement" in the referendum of October 2002, which extended his powers for another 7 years.<sup>21</sup> The pardoning applied to any Iraqi imprisoned or arrested for political or other reason.

When Saddam announced his general amnesty for virtually all the nation's prisoners, a mob had gathered outside the Abu Ghraib prison. They chanted praises to their dictator and shouted "Down Bush!"<sup>21</sup> The attitude changed once it became clear that the prisoners could break through the gates without any resistance from guards.

Abu Ghraib prison was reported to be deserted following the pardoning. However, many prisoners remained unaccounted for. According to a news report, authorities claimed that 13,000 inmates were released from Abu Ghraib prison, however numbers were not verified.<sup>21</sup>

Viable satellite imagery should prove appreciated to human rights groups and the effort to bring those guilty of abuses and war crimes to trial in the future. In late April 2004, a number of photographs surfaced which depicted abuse and torture of Iraqi prisoners held at the Abu Ghraib prison while in US custody. Some of the pictures depicted US soldiers, both men and women in military uniforms, laughing and giving thumbs-up signs while posing with naked Iraqi

prisoners made to perform sex acts. This follows the March 2004 announcement by the US Army that six members of the 800th Military Police Brigade were being investigated for abusing prisoners at Abu Ghraib.<sup>20</sup>

On May 24, 2004, following the abuses of detainees at Abu Ghraib, President G.W. Bush [announced in a speech](#) that the Abu Ghraib prison would be destroyed upon the completion of a new, modern prison to replace it:

*"A new Iraq will also need a humane, well-supervised prison system. Under the dictator, prisons like Abu Ghraib were symbols of death and torture. That same prison became a symbol of disgraceful conduct by a few American troops who dishonoured our country and disregarded our values. America will fund the construction of a modern, maximum security prison. When that prison is completed, detainees at Abu Ghraib will be relocated. Then, with the approval of the Iraqi government, we will demolish the Abu Ghraib prison, as a fitting symbol of Iraq's new beginning"<sup>21</sup>*

The actions carried out by the United States at Abu Ghraib are inexcusable. Proper delegations and reparations have been made but that will never give the countless detainees their lost livelihoods back.

### **Guantánamo Bay**

Guantánamo Bay is a detainment facility of the [United States](#) located in [Cuba](#). The facility was established in 2002 by the Bush Administration to hold detainees from the war in [Afghanistan](#) and later [Iraq](#). After the Justice Department advised that the Guantánamo Bay

Detention Camp could be considered outside U.S. legal jurisdiction, the first twenty captives arrived at [Guantánamo](#) on January 11, 2002.<sup>23</sup> After the Bush administration stated that detainees were not entitled to any of the protections of the Geneva Conventions, the [U.S. Supreme Court](#) stated on June 29, 2006, that they were entitled to the minimal protections listed under [Common Article 3](#) of the Geneva Conventions (See Appendix C). The detainees held as of June 2008 have been classified by the United States as "[enemy combatants](#)" and not regular prisoners.<sup>24</sup> Therefore they would be subjected to more severe conditions.

The treatment of the detainees at Guantanamo Bay is horrific. There have been alleged reports from past detainees, the media, and various international organizations of ongoing torture, sexual degradation, forced drugging, and religious persecution. Some detainees that have been released claim that they have been tortured by means of barbed wire, broken glass, burning cigarettes, pepper spray, and sexual assaults. (See Appendix D for an interview with a past detainee by an international organization). Due to these many inhumane actions, there have been 4 suicides and hundreds of suicide attempts to the public knowledge.<sup>24</sup>

On January 22, 2009, the [White House](#) announced that President [Barack Obama](#) had signed an order to suspend the proceedings of the [Guantanamo military commission](#) for 120 days and that the detention facility would be shut down within the year.<sup>24</sup> On January 29, 2009, a military judge at Guantánamo rejected the White House request, creating an unexpected challenge for the administration as it reviews how America puts Guantánamo detainees on trial.<sup>25</sup>

On Jan 7, 2011, President Obama signed the 2011 Defense Authorization Bill which contains provisions preventing the transfer of Guantánamo prisoners to the mainland or to other foreign countries, and thus effectively stops the closure of the detention facility. The U.S. Secretary of Defense said during a testimony that, “The prospects for closing Guantanamo as best I can tell are very, very low given very broad opposition to doing that here.”<sup>23</sup>

After the [United Nations](#) called unsuccessfully for the Guantánamo Bay detention camp to be closed, one judge observed 'America's idea of what is torture ... does not appear to coincide with that of most civilised nations'.<sup>24</sup> All of these actions demonstrate the inhumanness and unjust detainment policies being carried about in Guantanamo Bay.

Overall, even though the United States has contributed so much to the issue through activists and international organisations, they have some of the most corrupt and unjust detainment policies in the world.

### **Case Study 2: Hong Kong, China**

Immigration and detention policies in Hong Kong have been mainly focused on over migration from mainland China and neighbouring countries in Southeast Asia, especially Vietnam. For many years, Hong Kong was the first port for refugees fleeing Vietnam, even though most arriving Vietnamese were held in awful conditions in secure detention sites. Since China resumed authority, Hong Kong has ended its practice of accepting Vietnamese migrants and forcefully defended its policy of refusing all asylum seekers, who are generally treated as unauthorized immigrants.<sup>26</sup>

Since unification with China in 1997, Hong Kong has been governed by the Basic Law of the Hong Kong Special Administrative Region. The Basic Law establishes the “One Country, Two Systems” structure, according to which Hong Kong retains a degree of autonomy in setting domestic policy, including detainment policies. China is a part of the 1951 Refugee Convention, but the rights and duties set out in this convention have not been extended to Hong Kong.<sup>26</sup>

Many immigration offenses, which are established in the Immigration Ordinance, are heavily penalized, including unauthorized presence in Hong Kong. (See Appendix E for Immigration Ordinance)

The Immigration Ordinance authorizes the secretary for security to make any place as a detainment facility for the detention of people who are awaiting a decision on permission to stay in Hong Kong or who have been ordered removed.<sup>26</sup> Detention centres “shall be under the control and management of an officer appointed by the Secretary for Security and the officer appointed shall be: (a) the Commissioner of Correctional Services; (b) the Commissioner of Police; or (c) the Chief Staff Officer, Civil Aid Service”.<sup>27</sup>

The Hong Kong government maintains a firm policy not to grant refuge. According to the Hong Kong Human Rights Monitor, “There is no law or policy in Hong Kong offering protected status for refugees or asylum seekers.<sup>26</sup> Neither the Immigration Ordinance nor immigration guidelines provide for any different treatment for asylum seekers or refugees from other persons seeking entry to Hong Kong. The Government does not have a refugee determination procedure but instead relies on the UNHCR’s Hong Kong sub-office to process asylum applications. The UNHCR (United Nations Refugee Agency) communicates its decision on the status of the asylum seeker to the Director of Immigration, who has unfettered discretion to

decide whether or not to abide by the decision or choose to ignore it in making its immigration decision".<sup>27</sup>

Asylum seekers are generally treated as unauthorized immigrants in Hong Kong, so they are exposed to detention and deportation. According to the Hong Kong Human Rights Commission, asylum seekers "are denied access to health care, education, welfare, and housing, and are furthermore subject to detention. If they approach the Immigration Department to extend visas or get recognizance they are often rejected and will be asked to leave Hong Kong".<sup>28</sup>

The Immigration Ordinance contains several sections that deal specifically with the treatment of "residents or former residents of Vietnam." Beginning on 2 July 1982, any person from Vietnam who arrives without proper authorization is to be detained. This policy, which was established in the Immigration (Amendment) Bill 1982, led to the establishment of the first secure detention camps for asylum seekers in Hong Kong.

While the Refugee Convention has not been extended to Hong Kong, there are procedures in place for assessing torture claims. Despite serious criticism of these procedures, they have led to positive outcomes for claimants in Hong Kong courts. Courts were finding that there was no published policy describing the circumstances under which the government could exercise its power to detain awaiting verification of torture claims.

In March 2009, a Hong Kong court ruled that the government had to pay regulatory damages to the four non-residents who had filed torture claims. According to one source interviewed by the Global Detention Project, while the long-term impact of the rulings remains unclear, shortly after the 2009 ruling several dozen immigrants were released from detention.

Hong Kong has an extensive detention complex that encompasses several dozen current and former detention camps, prisons, and other holding facilities. Overall numbers of detainees, however, have gone down significantly since Hong Kong officially ended its policy of accepting Vietnamese migrants in the late 1990s. On 18 July 2008, the government reported that 387 persons were in immigration detention. This compares to the single-day total of 23,203 “illegal Vietnamese immigrants” held in detention camps as of 1 April 1993.<sup>28</sup>

According to Hong Kong Regulations, there were 20 facilities in use as of mid-2009.<sup>27</sup> In addition, many of the detention sites listed in the regulations are “detention quarters” or “rooms” located at ports of entry - including land borders with mainland China, ferry terminals, and the Hong Kong Airport - most of which appear to be used only as short-term holding facilities. Except for the airport, which according to one source often holds people for several days, the Global Detention Project (GDP) has been unable to confirm if these sites confine people for more than a few hours.

As of June 2009, the GDP was able to confirm the “in use” status of 12 detention facilities (see Appendix F). These facilities include prisons, custodial wards in hospitals, dedicated migrant detention centres, the airport detention quarters, and one juvenile detention centre. Some of the sites, like the Green Island Reception Centre, are apparently only standby facilities to be used in cases of massive influx of migrants.

According to government statistics, in 2007, more than 5,000 people were arrested on charges related to “illegal immigration” alone—3,007 immigrants from mainland China, and 2,041 “Vietnamese illegal immigrants and other non-ethnic Chinese illegal immigrants”.

However, the Immigration Department reports that during 2007-2008, it “detained” 12,374 people.<sup>27</sup>

All though Hong Kong’s detainment policies are primarily focused on immigration, they are still violating international law and their own Bill of Rights about the issue of detainment policies.

### **Case Study 3: Tunisia**

In the outcome of the significant popular uprising that ousted the government of former Tunisian President Ben Ali in January 2011, Tunisia saw several thousand citizens undertake a mass emigration to the Italian island of Lampedusa. This impelled the Italian government to declare a state of emergency on the island.<sup>29</sup> Tunisia is the closest shore to Lampedusa. Italy’s response, which included proposing to send police to Tunisia to help stem the flow of migrants, highlighted the long-standing ties between the two countries on migratory matters. In 1998, Italy and Tunisia finalized an agreement on the readmission of Tunisians and third-country nationals that also included Italian funding for the creation of detention centres in Tunisia.<sup>30</sup> After the removal of Ben Ali, the acting government quickly made some notable changes, including ending a 20-year ban on visits by human rights groups to that country’s prisons.<sup>29</sup>

Tunisia has been extremely secretive about its criminal and administrative detainment domain. Since 2008, a number of non-governmental sources have reported that the country has up to 13 dedicated immigration detention centres.<sup>29</sup> However, the Global Detention Project has been able to confirm the location of only one facility, the Al Wardia Centre, which is located in Tunis. (Appendix G)

No figures were available about the number of people detained, nor about the number and the nationalities of the foreigners who have been actually removed from the Tunisian territory. In 2010, it was finally reported that some 300 detainees were suffering in the 13 known detainment facilities.<sup>29</sup>

Although little is known about the conditions of Tunisia's immigration detention centres, the country's prisons have repeatedly been denounced for their poor standards. In 2008, the UN Human Rights Committee found that Tunisia's policing and detention policies were not in conformity with Article 9 of the Universal Declaration of Human Rights and expressed concern about the reports of poor standards in its prisons.<sup>30</sup>

Overcrowding and limited medical care posed significant threats to prisoners' health. During the year there were credible reports that authorities sometimes denied injured or sick prisoners prompt access to medical care. According to human rights organizations, prison conditions in the country continued to fall short of minimum satisfactory standards. Hygiene was extremely poor, and prisoners rarely had access to showers and washing facilities. Sources reported that 40 to 50 prisoners were typically confined to a single 194-square-foot cell, and as many as 140 prisoners shared a 323-square-foot cell.<sup>29</sup> Most prisoners were forced to share beds or sleep on the floor. Current and former prisoners reported that the lack of basic facilities forced inmates to share a single water and toilet facility with more than 100 cellmates, creating serious sanitation problems. Contagious diseases, particularly scabies, were widespread, and prisoners did not have access to adequate medical care. According to prisoners' families, the government imposed arbitrary restrictions, such as limiting family visits, when prisoners sought redress for grievances about treatment and conditions.

In the same report, the State Department highlighted reports of torture and ill treatment in prisons and detention centres, reporting: “According to defense attorneys and local and international human rights groups, police routinely refused to register complaints”.<sup>29</sup> Judges sometimes dismissed complaints without investigation and accepted as evidence confessions allegedly extracted through torture. Reports of torture were most frequently associated with the initial phases of interrogation/investigation and more often in pre-trial detention centers than prisons. Human rights activists, citing prisoner accounts, identified that political prisoners, Islamists, and persons detained on terrorism-related charges allegedly received harsher treatment than other prisoners and detainees.

Tunisian law does not have any specific provisions providing for the administrative detention of non-citizens.<sup>29</sup> These laws cover both Tunisians and foreign nationals, providing penalties for irregular migrants and for those who assist the entrance or stay of unauthorized persons. Tunisian government produces fines and imprisonments for up to one year for any non-national who enters Tunisia without proper authorization or documentation, or overstays his/her visa or permit.

Tunisia is the only country in North Africa that has not ratified the Migrant Workers Convention.<sup>29</sup> Tunisia has approved both the 1951 Refugee Convention and its 1967 Protocol. However, there is no national legislation implementing the Geneva Convention. The UN High Commissioner for Refugees (UNHCR), which has an office in Tunis, can grant asylum status. However, only some 40 percent of status refugees have received residence permits.<sup>30</sup>

The International Committee for the Red Cross (ICRC) has only been allowed access to prisons and detention centres in Tunisia since 2005. In 2010, ICRC delegates made 48 visits in 31 detention centres. During these visits delegates individually interviewed 600 detainees.<sup>31</sup>

After the ejection of Ben Ali, the temporary government ended the 20-year ban on visits by human rights groups to that country's prisons when it responded favourably to a request from Human Rights Watch (HRW), which was given access to two prisons. Commenting on the temporary government's decision, an HRW representative said: "Tunisia's transitional government has taken a critical step toward transparency in opening prisons to outside observers who can share their findings publicly," "It should now resolve to improve the treatment of prisoners, which was one of the darkest aspects of the human rights picture under President Ben Ali".<sup>32</sup>

As of February 2011, there were no reports about whether rights groups had requested or been granted access to additional incarceration facilities. Tunisian detainees now have a small hope that their life will get better with the 20 year ban lifted on human rights organisations from entering detention facilities. Through the many detention facilities that have been kept secret all these years, and the reports of torture and ill treatment from the facilities that international organizations have investigated, one can only imagine the unjust policies and inhumanity that has been carried out throughout the majority of the country.

## **Role of International Organizations**

The issue of detainment policies has quite a global impact. In addition to the UN, there are many various international organizations that play key roles in enforcing the rights of detainees and controlling the many unjust polices across the world.

The International Centre for Prison Studies (ICPS) assists governments and other relevant agencies to develop appropriate policies on prisons and the use of imprisonment. The Centre makes the results of its academic research and projects widely available to groups and individuals, both nationally and internationally.

### Main Objectives<sup>33</sup>

- To develop a body of knowledge, based on international covenants and instruments, about the principles on which the use of imprisonment should be based, which can be used as a sound foundation for policies on prison issues.
- To build up a resource network for the spread of best practice in prison management worldwide to which prison administrators can turn for practical advice on how to manage prison systems which are just, decent, humane and cost effective.
- To carry out, organise and publish research into the purposes of imprisonment and make this available to policy makers, practitioners, administrators, the media and the general public.

In 2002 the Centre published a handbook for prison staff entitled *A Human Rights Approach to Prison Management*.<sup>33</sup> This handbook describes the internationally agreed standards on the use of imprisonment and conditions of detention. It provides a model for good prison management which can be applied in every prison system in the world. In their work around the world, ICPS staff and associates have found that prison officials respond positively to the approach of having an opportunity to measure their work against a set of approved standards. The human rights standards on which the handbook is based do not come from any one country or region; but by definition they are international and capable of application in every country. This gives them an objective status which individual prison administrations find both helpful and accurate.

This human rights approach to prison management is not only ethical; it is also effective. It is a good way to manage prisons and ensure the rights of detainees.

Human Rights Watch is one of the world's leading independent organizations dedicated to defending and protecting human rights.

Mission Statement:

“Human Rights Watch is dedicated to protecting the human rights of people around the world. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We

challenge governments and those who hold power to end abusive practices and respect international human rights law.”<sup>32</sup>

A major success story for Human Rights Watch regarding detainment was the closing of a network of Secret Jails in China.

(See Appendix H for full Article)

Amnesty International was founded in 1961 by British lawyer Peter Benenson.<sup>34</sup> He became angry after reading a report about two Portuguese students who had been imprisoned for raising their glasses in a toast to freedom. He was so passionate about the issue; he called on people to protest the imprisonment of men and women around the world. Thousands of people in many countries offered their help, and Amnesty International was born.

Amnesty based its work on universal human rights, regardless of who a person was, where they lived, or the government responsible for the violation. The method of organizing action was simple. Ask groups of Amnesty volunteers to “adopt” a “prisoner of conscience” and start pestering the life out of the governments responsible until the prisoner was free.<sup>34</sup>

Since 1961, it is estimated that at least one-third of the cases Amnesty members have taken up have ended in positive results such as released prisoners or an end to torture. [By the end of their first year of activity, Amnesty International members were appealing for the freedom of 210 “prisoners of conscience.”](#)<sup>34</sup> A year later, 1,300 prisoner cases had been taken

up and 330 had been released. [Amnesty International still works to](#) free prisoners of conscience.

A success story is the story of Mexican indigenous human rights defender Raúl Hernández. “We are thrilled to report that after two years in Guerrero state prison on fabricated charges Raúl was finally released! A big thank you to all who took action!” Amnesty has been advocating on behalf of Raúl since 2008 when he was arrested and accused of murder.<sup>34</sup> However, eyewitness statements demonstrating that Raúl Hernández was not present when the murder took place were not taken into account. We are now calling for an investigation into his unfounded prosecution and for him to be fully compensated for his unfair imprisonment.

Amnesty is constantly evolving in response to new threats to human rights, new understandings of what human rights are, and new opportunities to protect people’s human rights.

The United Nations is an international organization, founded in 1945 after the Second World War by 51 countries, committed to maintaining international peace and security, developing relations among various countries and promoting social progress, better living standards and human rights.<sup>2</sup> On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights (See Appendix A). This declaration of human rights defines the issue of detainment policies. Article 9 of the declaration in particular, guarantees the right against arbitrary detainment and imprisonment.

The International Committee of the Red Cross (ICRC), established in 1863, works worldwide to provide humanitarian help for people affected by conflict and armed violence and to promote the laws that protect victims of war. An independent and neutral organization, its mandate originates from the Geneva Conventions of 1949.<sup>35</sup>

Through the Geneva Conventions, the international community has mandated the ICRC to visit both prisoners of war and civilians interned during armed conflict. Wherever possible, the ICRC also visits people detained in other situations of violence. ICRC detention visits aim to ensure that detainees, whatever the reason for their arrest and detention, are treated with dignity and humanity, in accordance with international norms and standards. ICRC tries to work with authorities to prevent abuse and to improve both the treatment of detainees and their conditions of detention.

To promote detainee welfare, the ICRC:

- negotiates with detaining authorities to obtain access to people deprived of their freedom, wherever they are, and to ensure that the ICRC can follow procedures that guarantee the effectiveness and consistency of its action;
- promotes contact between detainees and their families by facilitating family visits or transmitting Red Cross messages;
- provides detainees with medical and other supplies, either directly or through the detaining authority;

- Seeks solutions to humanitarian problems through confidential dialogue with the detaining authority.

In 2008, the ICRC visited roughly half a million prisoners and detainees in more than 80 countries worldwide.<sup>35</sup> A great example of the ICRC's success would be Sami Elhaj, a journalist from Al Jazeera Arabic TV, who was detained at the US facility in Guantanamo for almost six years. He explained how the ICRC's visits made a huge difference during this period, and remembers the first time he received news from his loved ones. (See appendix D for their interview)

It is because of these various international organizations that many detainment policies are kept under control and even brought to attention. Each of the organizations has had excellent success in their efforts to carry out their initiatives. Whether it is the closure of illegal prisons or ensuring human rights, these organizations have played a huge role in the unjust world of detainment.

## **Canada's Role**

Regarding the issue of detainment policies, Canada has a prevalent role. Many Canadian citizens have been detained internationally or even here in Canada. We also feel obligated to help out internationally as human rights are being violated.

An example of a Canadian being detained internationally was a teen in Cuba. He was involved in a car accident while on vacation and then detained in Cuba for more than three months. All accidents resulting in death or injury in Cuba are treated as possible crimes and so the teen was ordered to remain in the country until the case was resolved.<sup>36</sup>

A foreign affairs minister had expressed that the investigation was taking too long. He said “the delay faced by Canadians awaiting resolution of such cases could affect fellow Canadians’ choice of Cuba as a tourist destination.” According to the Department of Foreign Affairs, 108 Canadians have been arrested or detained in Cuba since 2006.<sup>37</sup> This unnecessary prolonged detainment had drawn attention from Canadian officials. The story was all over the news as it affected Canadians everywhere.

Canadian citizen Omar Khadr has been accused of throwing a grenade that killed a US soldier during a gun battle in Afghanistan in 2002, when he was only 15.<sup>38</sup> He declares that he was tortured into confessing to the murder. Khadr's lawyers also argue that his family forced him into the war as a child. However, the judge said the prosecution must show that Mr. Khadr had intent to commit a crime, and he told jurors they could consider his age in making their decision.

Canadian Prime Minister Stephen Harper has refused to ask US authorities to release Khadr. Harper said that Omar Khadr faces very serious charges in the U.S. and that his government will wait for the outcome of his case before commenting further.<sup>38</sup> The government has the power to bring Khadr back to Canada but they won't. Khadr is the only Canadian citizen to be held by the U.S. in Guantanamo Bay.

These are only two major examples of how detainment policies have affected Canadians worldwide. With the issue of imprisonment growing in global complexity, Canadian organizations have started to get involved. Detainment issues are not limited to the borders of foreign countries, however. Although Canadian detainment policy is relatively progressive, the country is not completely innocent. Canada has had its share of illegitimate incarceration through Afghanistan and within its own borders.

According to a legal expert there are some Federal government documents on Afghan detainees that suggest Canadian officials intended some prisoners to be tortured in order to gather intelligence.<sup>39</sup> Detainee abuse has become the subject of national debate after heavily redacted versions of the documents were made public. They revealed the Canadian military was not monitoring detainees who had been transferred from Canadian to Afghan custody. It was later declared that some of those detainees were being mistreated.<sup>40</sup>

Despite Canada's welcoming reputation, its approach to immigration, including its detention policies, has grown increasingly restrictive since the 1990s, especially since the 9/11 terrorist attacks in the United States.

As the Canadian Council for Refugees (CCR) has noted, "The Canadian government has used the broad powers of the IRPA to detain, arrest, and deport people based on mere suspicion or secret evidence". Canada's detention policy is established in Division 6 of the IRPA, Section 55 (See Appendix I) of which provides the basics for detaining irregular non-citizens. Immigration officers from the Canada Border Services Agency (CBSA) are authorized to

arrest and detain non-citizens, including permanent residents, if they have reasonable grounds. The law does not provide a limit for the length of detention.

In 1995, an asylum seeker from Nigeria was detained in Canada for several months, until his death due to complications caused from untreated medical conditions. Investigations into Canada's detention practices in recent years have raised concerns over the conditions at facilities across the country and the treatment of detainees. In 2005 a report by the UNHCR Working Group on Arbitrary Detention highlighted concerns over detention in Canadian facilities. This included, "A lack of communication with detainees regarding the legal process of detention, inadequate access to interpreters, and poor communication between the federal and provincial levels of government on the needs of detainees".<sup>41</sup>

The G20 is another good example of Canada's negative approach to detainment policies. When Toronto held the G20 Summit last year, as anticipated, there were large-scale protests. This provided an opportunity to see how the government responded.

A temporary facility, set up in a former film studio in the city's east end, had a capacity for 500 prisoners. Police estimated about 1,000 people were detained there at various times during the G20 protests.<sup>42</sup>

A tour of the facility was held, where large cages lined against a long wall. In each holding cell designed to hold 10 to 20 people, there was only a bench and a portable potty with no door. Prisoners were given toilet paper if they asked for it and they could sleep if they wanted to. Video cameras were placed on the ceiling about every five metres to monitor

prisoners from the time they entered to the time they left. Video surveillance was excluded in the portable bathrooms and search rooms, police said.<sup>42</sup>

"The No. 1 purpose for most of the arrests was to re-establish peace on our streets," police said. An official had said "the intention was always to release most of the protesters without charges because they were detained for a breach of the peace, which is not a criminal offence." Seven hundred detained protesters were released without being charged. The remaining 200 or so were sent to other jails.<sup>42</sup> The charges include arson, torching a police car, and endangering life.

It is generally accepted that the Canadian government over reacted regarding the G20. Even though political figures were coming from all over the world, the Canadian government employed oppressive tactics similar to Guantanamo Bay or Abu Ghraib in order to quench uprisings. The mistreatment of innocent protestors was unacceptable. No one should be crammed into cells with 10-20 other people and an open toilet even if they are considered a criminal.

Although Canada has its share of human rights infringements, it has had a much larger positive role. On January 31, 2011, the Canadian Border Services Agency (CBSA) released a report evaluating their Detentions and Removals Programs and proposing a number of policy changes. The report made many positive recommendations, such as the increased use of alternatives to detention. An example of an alternative to strict detainment would be the placing of low-risk persons in Immigration Holding Centres (IHCs). These centres have much

better conditions than typical detainment facilities. As Canada is making many positive policy changes, other countries that look up to Canada will presumably follow.

There are many experts like Irvin Waller and organizations such as Human Rights Watch contributing positive influences and helping to ensure the rights of detainees. The positive role of assisting governments and other relevant agencies to develop appropriate policies on prisons and the use of imprisonment is huge. Without these organizations and special individuals, detainees all over the world would be mistreated on a daily basis. Unfortunately, organizations cannot be everywhere in the world at once. But for the countries that we are helping, Canada's role is being fulfilled.

## **Possible Solutions**

There are only a couple reasonable solutions to unjust detainment policies. One major solution is to get the innocent detainees and non-violent offenders out of the inhumane detainment facilities.<sup>43</sup> No innocent man or women should have to undergo torture that is intended for a real criminal. This is why it is essential for organizations and powerful individuals to assist the innocent and non-violent minor offenders. As long as there are these special organizations, this solution can continue to happen. Some tactics that will fulfill this solution include:

- Increase the use of custodial supervision alternatives such as probation and parole for nonviolent offenders. This will provide an opportunity for nonviolent offenders to get out of facilities.
- Consider geriatric release programs when appropriate. Approximately 200,000 American prisoners are over the age of fifty. The cost of incarcerating them is particularly high because of their increased health care needs in old age, which are funded by the taxpayers. There is no point to keep harmless detainees when all they are doing is costing money, even if it is very little.
- Consider eliminating many mandatory minimum sentencing laws for nonviolent offenses. These laws remove all discretion from judges who are the most intimately familiar with the facts of a case and who are well-positioned to know which defendants need to be in prison because they threaten public safety and which defendants would in fact not benefit from prison time. Thousands of harmless activities are now classified as crimes. These are not typical common law crimes such as murder, rape, or theft. Instead they involve a series of business activities such as importing orchids without the proper paperwork, shipping lobster tails in plastic bags, and even failing to return a library book. Activities such as these should not be forgotten but they need not be such a crime as they are made out to be.
- A greater emphasis should be placed on victims' input throughout the criminal justice process. The voice of the victim should be more closely considered by judges and prosecutors at every stage. This emphasis will give most detainees a chance to prove they are innocent and reduce the overcrowding of most detainment facilities today.

- The criminal justice system should be structured to ensure that victims are treated with dignity and respect and with the choice to participate, receive restitution, and even be reconciled with first time non-violent offenders. This tactic can greatly reduce numbers in facilities.<sup>43</sup>

These solutions will return the lives of detainees back to normal, give recognition to the many international organizations, and also benefit the detention facilities by them not having to spend as much money on the amount of detainees withheld. A negative to this solution is the amount of legal cases that would occur after the innocent detainees are set free. Overall this solution is very positive with minimal negatives.

A second major solution is to straighten out the administrators and officials of the unjust detention policies. The solution can be demonstrated through the International Centre for Prison Studies.<sup>33</sup> This organization has had great success so there is no reason why this solution would not be successful as well. This solution gives the officials of foreign detention facilities strong advice on how to run their facility. A well-managed facility with humane policies will result in better treatment of the detainees. It will enforce a safer environment for the detainees and overall provide a positive solution to unjust detention policies.

A third solution is to raise awareness. This will encourage aid from the public and governments. From seeing the cold hard truth of the conditions that detainees must live in, people all over the world will start to care more about the issue.

Another solution is to do nothing. This is perhaps the worst solution as it negatives greatly outweigh the positives. With doing nothing: innocents are left to suffer, death may occur, detainees may never be free, and unjust policies are made out to seem accepted. A positive that may be considered is that repeat and dangerous offenders are kept in jail. This solution is simply out of the question as it itself is promoting inhumanness.

Most, if not all, solutions that have been attempted have been successful to some degree. The main problem with these types of solutions would be long periods of time to take effect as there are a lot of detainment facilities throughout the world. In addition, there are many governments of foreign countries that do not allow some organizations to assist them in maintaining humane policies. Other than these problems, with the help of powerful individuals and international organizations, the many solutions to unjust detainment policies are possible.

## **Conclusion**

Detainment facilities are an excellent idea, if they are used correctly. They are meant for real criminals who are a danger to society, not innocent people in the wrong place at the wrong time. Even if the majority of these people in the facilities are criminals (mostly minor offending), differing detainment policies do not have the right to make their lives a living hell. With vigilant management, facilities can obtain the law abiding policies that they need.

Even though there is not much media coverage on a world basis and, many detainment facilities are hidden and censored, it does not mean that the world should turn a blind eye towards the issue. With the help from various experts and international organizations, the

public is becoming more aware of this issue. If countries gain the ability of total global cooperation and see that varying policies are inhumane and unjust, the issue of detainment policies may someday cease to exist.

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## **Appendices**

### **Appendix A (Select Articles from the Universal Declaration of Human Rights)**

#### **Article 3**

- Everyone has the right to life, liberty and security of person.

#### **Article 5**

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

#### **Article 6**

- Everyone has the right to recognition everywhere as a person before the law.

#### **Article 7**

- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

#### **Article 8**

- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

#### **Article 9**

- No one shall be subjected to arbitrary arrest, detention or exile.

#### **Article 10**

- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

#### **Article 11**

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

#### **Article 12**

- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

#### **Article 14**

- 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

#### **Article 18**

- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

## **Appendix B (Map of “In Use” Detention Sites in the USA)**

Computer CPrime x Place Synonyms, Place A... x Global Detention Project... x New Tab x

www.globaldetentionproject.org/de/countries/americas/united-states/map-of-detention-sites.html

**Americas**

- Belize
- Canada
- Mexico
- United States**
  - Introduction
  - List of Detention Sites
  - Map of Detention Sites**
  - Country Links
  - Reference List
- Asia-Pacific
- Europe
- Middle East

**Quick Facts**

- Number of Immigration Detention Sites: 961 (2007)
- Detention Capacity: 33,400 (2009)
- Annual Number of Deportations: 367,000 (2008)
- Undocumented Population: 11.6 million (2006)
- Number of asylum seekers: 83,884 (end of 2007)

Disclaimer

**Country Links**

- » Government Agencies
- » International Organizations
- » NGOs and Research Institutions
- » Private Prison Contractors

**Map of "In Use" Detention Sites**

For more detailed information, see the complete List of Detention Sites.

Disclaimer | Sources | Categories

Map data ©2011 Europa Technologies, INEGI - Terms of Use

Country View

1. Ada County Jail
2. Adams County Jail
3. Aguadilla Service Processing Center (Aguadilla SPC)

11:22 PM  
06/05/2011

## **Appendix C (Common Article 3 relating to Non-International Armed Conflict from the Geneva Conventions)**

- Persons taking no active part in hostilities should be treated humanely (including military persons who have ceased to be active as a result of sickness, injury, or detention).

- The wounded and sick shall be collected and cared for and treated with respect.

#### **Appendix D (ICRC Interview with Former Guantanamo inmate)**

##### **Following your arrest in Afghanistan, you spent almost six years in Guantanamo. What stands out the most for you from this period of detention?**

Losing my freedom and not knowing why, not knowing how long I was going to stay there, not having any clue about these things which might have given me hope, being away from my family, my work, my country... Those are the things I remember most when I think back on my detention period.

One of the most difficult experiences was my hunger strike. It was the only way I had to express myself and refuse the reality that was imposed on me. It was a choice that I made and I am proud of it.

Another thing I will never forget is the first time I received a Red Cross message [brief family news exchanged between detainees and their families with the help of the ICRC] with the handwriting of my family and drawings from my children. Tears were streaming from my eyes. I could not believe that I was actually holding a message from them. Even though these messages were mostly censored by the authorities, sometimes so heavily that I could read only a few lines, they were still reassuring and always brightened my day.

##### **What was your reaction the first time you met an ICRC delegate?**

Staying in a prison for long periods, seeing only the guards and the prison grounds, stirs up indescribable feelings of frustration and sadness. Seeing someone from somewhere else has a double effect. On one hand, it generates a feeling of cautiousness because already the atmosphere does not inspire trust. On the other hand, there was this thrill of meeting someone other than the guards, someone who comes from the outside, wearing civilian clothes. It also inspired some expectations that the ICRC delegates might help us.

##### **Did visits from ICRC delegates make a difference, and, if so, how?**

The loss of contact with my family and other loved ones was the most difficult thing to live with and to accept. My mind and heart were always with them and not a single day passed without me thinking of what they were doing, how they were living and when I would see them again. I had to cope with the feeling of despair that sometimes came over me, despair at not being able to see them again, but I always had hope.

Finding out that the ICRC could help me contact my family was the most pleasant news, something I had been waiting for a long time. At least it would ease the feeling of uncertainty and offer me some consolation.

The books we received from the ICRC were a gate to an outside world and offered a way for us to have a normal activity for a change. You can imagine the importance of a book for a detainee who has absolutely nothing else to do.

But one of the most important services provided by the ICRC was medical visits. Every time an ICRC team visited us, it was accompanied by a doctor who checked on urgent cases and raised them with the authorities. This was crucial for us.

**How did your relationship with the delegates evolve over the years?**

It went from cautiousness to trust. I remember specifically one delegate who came to see me regularly. He was not Arab but still spoke Arabic. It felt good to talk to him. Sometimes we talked for a long time. He was a respectful man and, with time, my trust in him grew stronger. I had heard of the ICRC before being in Guantanamo but had not really known it very well. Being incarcerated and seeing the ICRC first-hand enabled me to know it better and to interact with its delegates.

**Has your perception of the ICRC changed? How was the ICRC perceived by other detainees?**

I never had a negative perception of the ICRC. It was more a matter of trust that was slowly but surely advancing in the positive direction. I personally could never forget the ICRC and I am grateful for ever. However, I now know that we sometimes expect great things of the ICRC, and these expectations are not always met.

Some detainees for instance did not think very highly of the ICRC. Some of them even refused to meet with delegates because they viewed them as being linked to the Americans. The Red Cross emblem was taken by some detainees to indicate that the ICRC is a Christian organization – although it is not. Some of us simply scratched off the emblem and replaced it with a drawing, but others declined to send messages to their families through the ICRC, just because of this emblem.

**But the ICRC goes to considerable effort to bring a minimum of humanity to places of detention and to ensure that the dignity of detainees is respected...**

Some improvements needed to be made and sometimes the ICRC was not able to offer us much. But their mere presence was important for me and for many others. Their presence made us feel less forgotten and abandoned. Sometimes we had improvements in the conditions of detention and sometimes not. The impact was limited but important nonetheless.

The opinions expressed by the interviewee are his alone and do not always necessarily represent those of the ICRC.

## Appendix E (Hong Kong Immigration Ordinance)

- “Overstaying” an entry permit, which is grounds for expulsion from Hong Kong and can lead to criminal prosecution (CLIC website; Chan 2009);
- “Breaches of conditions of stay,” such as working without appropriate permission, which according to Section 41 of the Immigration Ordinance is considered “an offence” and makes a person “liable on conviction to a fine ... and to imprisonment for 2 years”;
- Presenting false information or forged travel documents, which Section 42 of the ordinance states makes a person, “on conviction on indictment, [liable] to a fine of \$150,000 and to imprisonment for 14 years.”

The Immigration Ordinance authorizes specific officials within the Hong Kong Security Bureau—including officers of the Immigration Service and ranking members of the police force—to order the detention of people for a number of immigration-related reasons, including:

- “Detention for inquiry”: Immigrants suspected of having violated the ordinance can be detained for investigation for an initial period of 48 hours, which can be extended for 5 additional days (Section 26).
- “Detention pending examination and decision as to landing”: People suspected of having arrived in Hong Kong without appropriate authorization can be held “for not more than 24 hours pending the examination; and ... for not more than a further 24 hours pending a decision to give or refuse him permission to land” (Section 27).
- “Detention for inquiry as to deportation”: The Secretary for Security can issue a detention warrant to hold a foreigner for up to 14 days if there are reasonable grounds for suspecting that the person is deportable because he/she has been found guilty in Hong Kong of an offence punishable with imprisonment for not less than 2 years and/or the governor deems it to be conducive to the public good. Under certain conditions, this period of detention can be extended to a maximum of 28 days (Section 29 and 20).

- “Detention pending removal or deportation”: This category of detention covers a number of different scenarios, but generally authorizes the detention of non-residents who have been issued a deportation or removal order. In most instances, there is no specified limit on the length of detention (Section 32).

### **Appendix F (Map of non-secret detainment facilities in Hong Kong)**



**Appendix G (Map of non-secret detention sites in Tunisia before 2011)**



**Appendix H (Human Rights Watch Success Story & Unjust detainment policies in China)**

**Closing China's Network of Secret Jails**

**Fighting widespread illegal detention**

**DECEMBER 9, 2010**



**Detained petitioners stand behind locked gates of a black jail in Beijing.**

***The Chinese government is finally addressing the urgent need to close the black jails we helped to expose.***

In September, Chinese state media reported that Beijing police had arrested the chairman and general manager of a private company accused of detaining people in “black jails”—secret, makeshift detention centers that Human Rights Watch helped to expose.

Each year thousands of people who want to petition Beijing with complaints about local governance are prevented from doing so by local officials who arrest and hold them in black

jails. Once detained, petitioners are subjected to abuses including physical and sexual violence, food and sleep deprivation, denial of medical care, and intimidation. The central government, rather than crack down on these facilities, had simply denied that they exist.

Our researchers interviewed dozens of former detainees. We documented the proliferation of plainclothes thugs tasked with abducting petitioners from the streets of Beijing and provincial capitals and imprisoning them incommunicado in black jails.

Two weeks after we released our findings at a press conference in Hong Kong, *Liaowang*, a Chinese language publication aimed at Communist Party bureaucrats and policy-makers published an article echoing our findings on black jails. A short time later, the Chinese government ordered the 582 Beijing-based liaison offices of local and provincial authorities, which had often been used as black jails, to issue schedules for their eventual closure.

Most recently, Chinese state media announced that the Beijing public security bureau launched an investigation into Anyuanding Security Technology Service; a private company alleged by *Caijing* magazine, *Southern Metropolis Daily*, and the *China Daily* newspapers to staff and run black jail facilities in Beijing.

This investigation means the Chinese government is finally addressing the urgent need to close the black jails we helped to expose. Human Rights Watch plans to re-release our report on black jails in Chinese in early 2011 and will continue to push for an end to arbitrary detention in secret jails.

## **Appendix I (Division 6 of the Immigration and Refugee Protection Act of Canada)**

### Detention and Release

#### Arrest and detention with warrant

**55.** (1) An officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.

### Arrest and detention without warrant

(2) An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,

(a) who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2); or

(b) If the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.

### Detention on entry

(3) A permanent resident or a foreign national may, on entry into Canada, be detained if an officer

(a) Considers it necessary to do so in order for the examination to be completed; or

(b) Has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security or for violating human or international rights.

### Notice

(4) If a permanent resident or a foreign national is taken into detention, an officer shall without delay give notice to the Immigration Division.

56. An officer may order the release from detention of a permanent resident or a foreign national before the first detention review by the Immigration Division if the officer is of the opinion that the reasons for the detention no longer exist. The officer may impose any conditions, including the payment of a deposit or the

posting of a guarantee for compliance with the conditions, that the officer considers necessary.

#### Review of detention

57. (1) within 48 hours after a permanent resident or a foreign national is taken into detention, or without delay afterward, the Immigration Division must review the reasons for

58. (1) The Immigration Division shall order the release of a permanent resident or a foreign national unless it is satisfied, taking into account prescribed factors, that

(a) They are a danger to the public;

(b) They are unlikely to appear for examination, an admissibility hearing, removal from

Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2);

(c) The Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security or for violating human or international rights;

Or

(d) the Minister is of the opinion that the identity of the foreign national has not been, but may be, established and they have not reasonably cooperated with the Minister by providing relevant information for the purpose of establishing their identity or the Minister is making reasonable efforts to establish their identity.

2) The Immigration Division may order the detention of a permanent resident or a foreign national if it is satisfied that the permanent resident or the foreign national is the subject of an examination or an admissibility hearing or is subject to a removal order and that the permanent resident or the foreign national is a

danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.

### Conditions

(3) If the Immigration Division orders the release of a permanent resident or a foreign national, it may impose any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.

59. If a warrant for arrest and detention under this Act is issued with respect to a permanent resident or a foreign national who is detained under another Act of Parliament in an institution, the person in charge of the institution shall deliver the inmate to an officer at the end of the inmate's period of detention in the institution.

### Minor children

60. For the purposes of this Division, it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.

### Regulations

61. The regulations may provide for the application of this Division, and may include provisions respecting

- (a) Grounds for and conditions and criteria with respect to the release of persons from detention;
- (b) Factors to be considered by an officer or the Immigration Division; and
- (c) Special considerations that may apply in relation to the detention of minor children.

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