



**THE RIGHTS OF PRISONERS
AND DETAINEES**
THE 2019 I-MODEL UN UPR



THEMATIC ISSUE GUIDE

Every human being, whether an ordinary citizen, prisoner, detainee, terrorist or asylum seeker, has the right to be treated with dignity and respect. Article 10 of the ICCPR further mandates that all 'persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. Within the context of the I-Model UN UPR, a **prisoner** refers to 'any person deprived of personal liberty as a result of conviction for an offence', whilst a **detainee** means 'any person deprived of personal liberty except as a result of conviction for an offence'. The UN Basic Principles for the Treatment of Prisoners states that except for some limitations that are necessitated by incarceration, 'all prisoners shall retain the human rights and fundamental freedoms set out in the UDHR, and... the ICESCR and the ICCPR and the Optional Protocol thereto, as well as such other rights as are set out in other UN covenants'. Issues to consider regarding prisoners and detainees may include: **arbitrary arrest or detention, the right to a fair trial, freedom from degrading treatment, punishment, and torture, access to health services, cultural activities and education, meaningful remunerated employment, the juvenile correctional system and reintegration into society.**¹

1. MEASURES TO PROTECT PHYSICAL AND MORAL INTEGRITY

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (which three of four of the States Under Review have ratified) declares that States should 'take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'. In Article 1 torture is defined as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person'. No exceptional circumstances (war, internal political instability etc.) are accepted as justifying the use of torture. All of the States Under Review have had concerns regarding prisoners' rights and the use of degrading treatment, punishment, and torture for those incarcerated. All of the States further retain capital punishment. In the UN Human Rights Council's 2014 Commission of Inquiry, the DPRK was accused of subjecting its prisoners to 'deliberate starvation, forced labour, executions, torture, rape, and...punishment, forced abortion and infanticide'. The definition of torture in Chinese legislation still fails to include 'mental pain', and amongst other legal abugities, has allowed for the continuation of torture within the Chinese judicial system. In the ROK, more

¹ Please note that the provided topics within the overall thematic issue are a general guide only. Participants are encouraged to explore other topics related to the thematic issue aside from the ones outlined within this guide.

than 200 children had been [detained, for violating the Immigration Act](#), and [Japan's system of informing death row prisoners only an hour before their actual execution](#) has been criticised for inflicting unnecessary and significant anxiety on both the prisoner and their family.

- Transparency regarding use of solitary confinement
 - Before receiving the death penalty
- For extended periods of time or on life-sentenced prisoners
 - Social policies linked to high incarceration rates
- Forced labour and violations of rights within prison camps
- [Elderly prisoners](#) and [provisions within](#) retirement schemes
- [Maintenance of physical](#) and mental integrity with implementation of the death penalty
 - Transparency and related problems regarding capacity rates
 - Right to engage in [social interaction](#)
- Sexual and physical violence within prisons by other inmates/figures of authority

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2. MEASURES FOR THE PROVISION OF MEDICAL, CULTURAL AND EDUCATIONAL SERVICES

Despite Article 25 of the UDHR guaranteeing health for everyone and the Basic Principles assuring 'access to the health services available in the country without discrimination on the grounds of [prisoners and detainees'] legal situation', prisoners suffer a disproportionate number of health problems. Tuberculosis, stress and mental health issues, HIV/AIDS and drug-related illnesses in particular are common issues. The Basic Principles also outline prisoners' 'right to take part in cultural activities and education aimed at the full development of the human personality'. Whilst past UPR reviews have noted improvement within the DPRK regarding the promotion of human rights and the National Strategy for the Development of Education, [there is still little evidence to demonstrate](#) that the DPRK has implemented further recommendations for the *kyanliso* camps in particular, given that the DPRK does not recognise that these exist. There are also reported problems of inadequate food, water, and medical treatment [in China](#) and [Japan](#), and issues of overcrowding in [the ROK](#).

- Access to food, water, hygiene, cleanliness, sanitation, heating, lighting, ventilation, clothing, bedding and opportunities for exercise in fresh air
 - Access to additional health-related rights such as dental, psychiatric and sexual health care
 - Policies and suitable detainment for the criminally insane in separate, equipped institutions
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- Educational and cultural programs for prisoners and detainees
 - For the illiterate and those who do not speak the national language
 - Rebuilding and expanding postsecondary education programs
 - Affordability and [access to essential and recreational items](#) within prisons
 - The right to practice religion and have access to a minister of their religion
 - Rebuilding and expanding postsecondary education programs

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3. MEASURES AGAINST ARBITRARY ARREST OR DETENTION

Arbitrary detention - or the violation of the right to liberty - is defined as the arrest and deprivation of liberty of a person outside of the confines of nationally recognised laws or international standards. Commonly, individuals are not provided with any clear reason as to why or upon what grounds they are being arrested. Within [Article 9 of the ICCPR](#), which guarantees the right to liberty, four main conditions are listed as counting towards arbitrary detention: '1) the grounds for the arrest are illegal; 2) the victim was not informed of the reasons for the arrest; 3) the procedural rights of the victim were not respected; 4: the victim was not brought before a judge within a reasonable amount of time'. Delegates should consider the extent to which the States have used arbitrary arrest or detention within the past years, either openly or in a closed manner. The DPRK, for instance, was condemned by [various NGO](#) actors in the May 2019 UPR for routinely using arbitrary arrest. China too was [noted](#) by the UN HRC's Working Group on Arbitrary Detention in 2018 for implementing arbitrary arrest and detention of human rights lawyers. Delegates are encouraged to examine the following issues via current legislations, past UPRs and other sources to determine their stance and Questions for the States.

- **Judicial processes and implementation of fair trials before imprisonment or detainment**
 - Forced disappearances
- **Implementation and usage of administrative detention, false or indefinite imprisonment, civil confinement and preemptive arrests**
 - Existence and role of police services, including 'secret police' agencies

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4. OTHER RIGHTS

States are encouraged to examine other relevant issues to prisoners and detainees within the I-Model UN UPR process, and determine present legislation, laws, social attitudes and social and welfare schemes for issues such as:

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- Women in prison
 - Juveniles in detention
 - Prisoners and detainees' contact with the outside world
 - Complaints and inspection procedures
 - Making the best use of prisons and reintegration measures after release
 - Prevention measures

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OTHER USEFUL RESOURCES

- **UPR Database:** recommendations to the [ROK](#), the [DPRK](#), [China](#), and [Japan](#)
 - **Amnesty International:** [No End in Sight: Torture and Forced Confessions in China](#)
 - **Prison Law of the People's Republic of China**
 - **WHO:** [Health in prisons - A WHO guide to the essentials in prison health](#)
 - **UN Training Series:** [Human Rights and Prisons: A Pocketbook of International Human Rights Standards for Prison Officers](#)
 - **[Un Working Group on Arbitrary Detention](#)**
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